

Ordinance No. 122424


Council Bill No. 115917

AN ORDINANCE relating to the Seattle Streetcar; addressing the financing of operating, maintenance and capital costs of the Seattle Streetcar and authorizing agreements in connection therewith; authorizing an agreement with King County for operation and maintenance of the Seattle Streetcar; authorizing the creation of a City fund; authorizing the loan of funds from the City's Consolidated (Residual) Cash Pool, or its participating funds, to the new fund; making appropriations from the new fund; reducing an appropriation in the 2007 Budget; and removing a budget proviso that had restricted spending on streetcar operations.

CF No. _____

Date Introduced: <u>6-11-07</u>		
Date 1st Referred: <u>6-11-07</u>	To: (committee) <u>TRANSPORTATION</u>	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage: <u>6-25-07</u>	Full Council Vote: <u>7-1</u>	
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Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: 
Councilmember

Committee Action:

DO Pass 4-1 (JD, TR, JG, PS) (NL)
6-25-07 Passed As Amended 7-1-0
(No: Licata; Excused: Steinbybeck)

This file is complete and ready for presentation to Full Council. Committee: _____
(initial/date)

Law Department

Law Dept. Review

OMP
Review

City Clerk
Review

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ORDINANCE 122424

AN ORDINANCE relating to the Seattle Streetcar; addressing the financing of operating, maintenance and capital costs of the Seattle Streetcar and authorizing agreements in connection therewith; authorizing an agreement with King County for operation and maintenance of the Seattle Streetcar; authorizing the creation of a City fund; authorizing the loan of funds from the City's Consolidated (Residual) Cash Pool, or its participating funds, to the new fund; making an appropriation from the new fund; and reducing an appropriation in the 2007 Budget; removing a budget proviso that had restricted spending on streetcar operations.

WHEREAS, Ordinance 121951 authorized the construction of a modern streetcar line serving downtown Seattle, Denny Triangle and South Lake Union (SLU), and the formation of Local Improvement District (LID) No. 6750; and

WHEREAS, the City Council authorized the Executive to begin negotiation of an operation and maintenance agreement with King County Metro in Ordinance 121850; and

WHEREAS, Ordinance 121850 requires that City funding for operation and maintenance of the streetcar be provided exclusively from funds from the sale of City surplus property in SLU and from revenues derived from new revenue sources specifically devised to pay for the SLU streetcar operation and maintenance costs; and

WHEREAS, the Executive has proposed an interlocal agreement and a finance plan that satisfies the requirements of Ordinance 121850; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Mayor or his designee is authorized to execute an agreement substantially in the form of Attachment A.

Section 2. Attachment B, the Seattle Streetcar Operations and Maintenance Financial Plan (the Financial Plan) proposed by the Executive has been submitted and will be used as the "Baseline Financial Plan" to monitor and track actual expenditures and revenues against those projected in the Financial Plan. The Executive shall provide an annual written report to the City

1 Council pertaining to the Seattle Streetcar's operations and finances for the preceding year,
2 comparing actual experience with the Baseline Financial Plan. The report will be due no later
3 than March 1 of every year. The report shall include projected vs. actual ridership numbers,
4 projected vs. actual revenues and expenditures, actual use of funds from the Consolidated
5 (Residual) Cash Pool for interim financing, the number of Metro service hours used to operate
6 the streetcar, and a narrative explaining any operational or capital issues that have occurred in the
7 previous year or are anticipated.
8

9 Section 3. The Mayor or his designee is authorized to negotiate and execute streetcar
10 vehicle and station sponsorship agreements consistent with the Financial Plan and consistent
11 with Seattle Municipal Code provisions relating to regulation of signage. The sponsorship
12 agreements may provide for the City to grant sponsorship rights for streetcar vehicles and
13 stations, establish the term and payments associated with the sponsorship rights, and establish the
14 forms of sponsor identification such as signage and audible messages that will be provided to
15 sponsors, with the limitation that agreements will not allow for coverage of streetcar vehicle
16 windows.
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19 Section 4. The Director of Finance is hereby authorized to create in the City Treasury the
20 Seattle Streetcar Fund, from which may be paid certain operating, maintenance, and capital costs
21 related to the Seattle Streetcar, including costs for city administration. The Fund shall receive all
22 revenues associated with operating and maintaining the Streetcar, including but not limited to
23 revenues from sponsorship agreements; federal, state, county or other grants or transfers; private
24 funding, donations or gifts; property sales proceeds; and other monies as authorized by
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1 ordinance. The Fund shall receive earnings and pay interest on its positive and negative
2 balances. The Director of Seattle Transportation Department shall have responsibility for
3 administering the Fund.

4 Section 5. A loan of up to Two Million Two Hundred Thousand Dollars (\$2,200,000)
5 principal and interest outstanding at any one time is hereby authorized to be made from the City's
6 Consolidated (Residual) Cash Pool or its participating funds to the Seattle Streetcar Fund. Said
7 loan is to be repaid no later than December 31, 2018 with interest on the loan at the rate of return
8 of the City's Consolidated (Residual) Cash Pool.
9

10 Section 6. The entire principal and interest amount of the loan authorized by Section 5
11 shall be repaid.
12

13 Section 7. The Director of Finance may effectuate the loan authorized in Section 5 above
14 by transferring cash from one or more of the funds participating in the City's Consolidated
15 (Residual) Cash Pool to the Seattle Streetcar Fund, or by carrying the Seattle Streetcar Fund in a
16 negative cash position in an amount not to exceed Two Million Two Hundred Thousand Dollars
17 (\$2,200,000), until no later than December 31, 2018. The Director of Finance is further
18 authorized to establish, and modify if necessary, from time to time, a repayment plan and
19 schedule.
20

21 Section 8. If the Executive intends to propose an annual Streetcar Service Plan to the
22 County as described in Section 6.1 of Exhibit A that includes potential changes in streetcar
23 operations that may result in headways over or under 15 minutes or hours of operation that are
24 over or under a weekly equivalent of 15 hours per day, or that requires a level of City funding
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1 that exceeds 10% of that projected in the Baseline Financial Plan for that year, then the Executive
2 must submit the proposed Streetcar Service Plan to the City Council for its review and approval,
3 via Council resolution, prior to submitting the plan to King County for its consideration.

4 Section 9. By October 1, 2007, the Executive shall propose a plan to pay for any
5 remaining capital costs pertaining to the South Lake Union Streetcar using the following revenue
6 sources: federal grants that have been requested for 2007, the proceeds from the sale of excess
7 City property adjacent to the Seattle Streetcar maintenance base; \$2 million from the South Lake
8 Union Proceeds Subaccount established by Ordinance 120411; and \$1.5 million from the
9 Denny/South Lake Union Transportation Mitigation Funds. The order in which these funds are
10 used should be prioritized by availability to minimize the extent to which interim financing is
11 used to pay for streetcar capital costs. Once the streetcar capital costs are paid, the Council may
12 consider using any remaining funds, if appropriate and allowable, to establish a contingency fund
13 to pay for major maintenance for the streetcar and/or pay for the streetcar's Phase I operation
14 costs.
15

16
17 Section 10. The Executive shall provide written confirmation to the Chair of the
18 transportation committee that sufficient insurance for the Seattle Streetcar has been acquired
19 prior to beginning operations of the Streetcar. The Executive shall maintain sufficient insurance
20 for the duration of the project.
21

22 Section 11. In order to pay for necessary costs and expenses incurred or to be incurred in
23 2007, but for which insufficient appropriations were made, a new appropriation is made in the
24 2007 Budget from the fund shown, as follows:
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Fund	Department	Budget Control Level	<i>Amount</i>
Seattle Streetcar Fund (XXXXX)	Seattle Department of Transportation	Streetcar Operations	\$579,000
Seattle Streetcar Fund (XXXXX)	Seattle Department of Transportation	Debt Service	\$2,000

The purpose of the Streetcar Operations BCL is to operate and maintain the Seattle Streetcar.

The purpose of the Debt Service BCL is to make interest payments on outstanding balances of the interfund loan authorized in Section 5.

Section 12. The appropriation for the following item in the 2007 Budget is reduced from the fund shown, as follows:

Fund	Department	Budget Control Level	Amount
Transportation Operating Fund (10310)	Seattle Department of Transportation	Mobility-Operations (17003)	(\$815,000)

Section 13. The restrictions imposed by the following budget proviso are removed and they are no longer restrictions for any purpose including for Subsection 1(b) of Ordinance 122298:

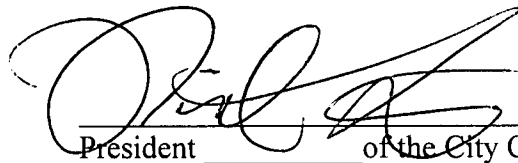
Department	Green Sheet	Proviso Description	Budget Control Level
Seattle Department of	#99-1-A-1	Prohibits the spending of money appropriated for 2007 for the Seattle	17003

Transportation		Department of Transportation's Mobility Operations BCL for operation of the South Lake Union Streetcar until authorized by future ordinance.	
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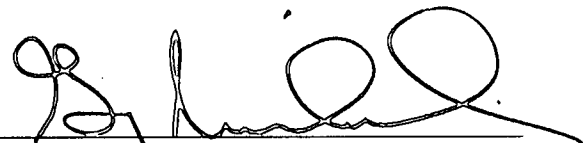
Section 14. Acts consistent with the authority and prior to the effective date of this ordinance are hereby ratified and confirmed.

Section 15. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.


Passed by the City Council the 25th day of June, 2007, and signed by me in open session in authentication of its passage this 25th day of June, 2007.


President _____ of the City Council

Approved by me this 27th day of June, 2007.


Gregory J. Nickels, Mayor

Filed by me this 28th day of June, 2007.


City Clerk

(Seal)

Attachment A – INTERLOCAL AGREEMENT between King County and City of Seattle for
Seattle Streetcar Operations and Maintenance

Attachment B – Seattle Streetcar Operations and Maintenance Financial Plan (May 2007)

INTERLOCAL AGREEMENT

between

King County and City of Seattle

for

Seattle Streetcar Operations and Maintenance

This AGREEMENT ("Agreement") is entered into this _____ day of _____ 2007, by and between the City of Seattle (hereinafter referred to as "the City") and King County (hereinafter referred to as "the County") and as may be referred to individually as "Party" and collectively as "Parties".

RECITALS

Whereas, pursuant to Chapters 36.56 RCW and 35.58 RCW and public vote, the County is authorized to perform metropolitan public transportation functions; and

Whereas, the City's authority for construction, acquisition, maintenance, operation, extension, alteration, repair, control and management of public transportation services is conditioned on the County's consent per RCW 35.58.260; and

Whereas, the County has approved in Ordinance _____ the City's streetcar project from the Fairview Avenue N and Ward Street to Westlake Avenue and Olive Way in the City; and

Whereas the City had experience building a streetcar as owner and builder of the Waterfront Streetcar; and

Whereas, the City and the Municipality of Metropolitan Seattle (METRO) entered into a Waterfront Streetcar Operations Agreement on February 22, 1978; and

Whereas, the METRO assumed ownership of the Waterfront Streetcar from the City on November 1, 1985 pursuant to a transfer agreement between the City of Seattle and METRO; and

Whereas, the County has experience operating and maintaining streetcars in the City of Seattle and will operate and maintain Sound Transit's light rail system; and

Whereas, the City developed a Capital Finance and Operating and Maintenance Plan for the Seattle Streetcar in April 2005 that anticipates the re-allocation of King County Metro Transit bus service hours from the LINK Light Rail service area to the Seattle Streetcar and identifies other planned sources of funds to support the City's contribution to Seattle Streetcar operating and maintenance costs; and

Whereas, King County acknowledges the City's anticipation of reallocated bus service hours but reserves the right to determine the source of its share of Seattle Streetcar funding, consistent with adopted policies for allocating service among transit planning subareas; and

Whereas, City of Seattle taxpayers owning property within City of Seattle Local Improvement District 6750 are contributing \$25,700,000 toward the total cost to construct and equip a modern streetcar line serving Downtown Seattle, Denny Triangle and South Lake Union; and

Whereas, the City is procuring, through an agreement with the City of Portland, three streetcar vehicles of the similar design and specification as those operating on the City of Portland's Portland Streetcar and Sound Transit's Tacoma Streetcar lines; and

Whereas the parties believe it is in the best interest of the public to have the County operate and maintain the Seattle Streetcar once the City has constructed the facilities and procured the operating equipment;

NOW, THEREFORE, in consideration of the mutual terms and obligations contained herein, the Parties agree as follows:

1.0 Purpose and Scope of Agreement

1.1 Purpose and Scope

The Agreement, including attached exhibits, specifies the roles and responsibilities regarding the operation and maintenance of the Seattle Streetcar following construction by the City and during Startup and Passenger Service.

1.2 Definitions

Words, terms, and abbreviations used in this Agreement not defined in the body of this Agreement are defined in Exhibit A attached hereto.

2.0 Description

The terms of this agreement are limited to the segment of the Seattle Streetcar consisting of 1.3 miles of double track for passenger service, and 0.2 miles of maintenance facility lead track as shown in Exhibit B.

3.0 General

3.1 County Obligations

- a. Assist the City with Startup activities;
- b. Operate the Seattle Streetcar in accordance with Seattle Streetcar Service Plan.
- c. Comply with regulatory requirements affecting the operation of the Seattle Streetcar, including reporting to regulatory agencies (local, state, and federal).
- d. Develop and adopt the Seattle Streetcar Service Plan, Operations Plan, and System Safety Program Plan.

3.2 City Obligations

- a. Cooperate with the County in the development of the Seattle Streetcar Service Plan.
- b. Review the County's Seattle Streetcar Operations Plan for approval.
- c. Construct or procure all facilities, systems, equipment and vehicles, except as otherwise provided in the Agreement, in a condition that would allow the County to perform its obligations in a safe and efficient manner.
- d. Arrange for the required utility connections and service to Seattle Streetcar facilities.
- e. Undertake capital improvements and replacements of Seattle Streetcar facilities and equipment as necessary, including vehicles.
- f. Contract for any service not specifically assigned to the County under this Agreement, including capital repairs and replacement beyond normal maintenance of facilities and equipment.
- g. Provide special fare media, if required, for use on the Seattle Streetcar consistent with County requirements.
- h. Be responsible of all operations audits, including the Washington State Department of Transportation's triennial audit of the Seattle Streetcar System Safety Program Plan.

4.0 Ownership and Use of the Seattle Streetcar

Ownership of the Seattle Streetcar facilities and vehicles will remain with the City. The County will not use, or permit use by third parties of, the Seattle Streetcar facilities for any purpose other than operation and maintenance of the Seattle Streetcar except with approval or upon receiving direction by the City. The City retains the right to enter into sponsorship agreements associated with Seattle Streetcar facilities and vehicles. The County will provide access to the Seattle Streetcar facilities and vehicles for application of signage and graphics associated with such sponsorship.

The City is incorporating sustainable design features into the Seattle Streetcar maintenance facility. The County will provide access to the Seattle Streetcar facilities for evaluation of these design features.

5.0 Startup

The projected start date for revenue passenger service is December 1, 2007. The period preceding the start date for revenue passenger service is the "Startup Period". The Startup Period will be used to construct and prepare for operation of the Seattle Streetcar. Preparation for operation will include: hiring and training of staff, testing of facilities and equipment, certifying and commissioning of systems, and developing plans and procedures. Responsibility for the work during the Startup Period shall be allocated as set forth in Exhibit C.

The City will select the start date for revenue passenger service in consultation with the County within 30 days of execution of this agreement.

6.0 Service Planning and Scheduling

6.1 Seattle Streetcar Service Plan

The City will provide the County with a proposed service plan for 2007 and 2008 not later than 90 days prior to the start date of revenue passenger service and not later than March 30 each year thereafter for the coming calendar year. The proposed service plan will include headways and hours of operation. The City and County will meet to discuss the plan prior to the County's adoption of the final plan. If the parties cannot agree on the content of the plan, the dispute resolution process described in this Agreement shall be used to resolve any disagreement. The service plan may be amended during the year upon agreement of the parties in writing.

6.2 Scheduling and Staff Assignments

Based upon the adopted service plan, the County will prepare streetcar schedules and assignments of personnel and equipment to meet the requirements of the plan.

6.3 Special Events

The City will inform the County in writing at least 30 days prior to any special events that may affect streetcar service. The County will make every effort to provide personnel and equipment for special events not listed in the annual service plan per the City's request. Special events known when the proposed annual service plan is prepared by the City shall be specified in that plan. Special events may include non-revenue service operations associated with vehicle sponsorships.

7.0 Operations

7.1 Operations Plan

The County will develop plans for regular service operations, special services, and emergency operations. The County will develop operating procedures for the guidance of its staff. Together, these plans will constitute the Seattle Streetcar Operations Plan (Operations Plan). The Operations Plan will be presented to the City at least three (3) months prior to the anticipated date of the first day of revenue passenger service for the City's review and approval, such approval not to be unreasonably withheld, delayed or conditioned. Any significant revisions to the Operations Plan will require the City's review and approval.

7.2 Unusual Occurrence Report

The County will send a copy of its daily Unusual Occurrence Report covering Seattle Streetcar operations at the end of each day's operation. This report will include any delays to trains exceeding 10 minutes, any accidents resulting in serious injury or serious damage to streetcar equipment. The County will give an immediate report of any accident or incident resulting in notice being given to the media, or which can reasonably be expected to be reported in the public media. This notice to the City should be given as soon as practicable after the County has dispatched its response personnel to deal with the incident.

7.3 Bus Bridge

In case of Streetcar service disruption, the County will arrange for substitute bus service, subject to vehicle availability, in accordance with its existing Standard Operating Procedure governing such service. The City shall reimburse the County for the cost of the substitute bus service as provided herein.

8.0 Maintenance

8.1 Overall Services

The County shall undertake its maintenance responsibilities as described in this Section 8 in accordance with the manufacturer's recommendations, warranty requirements, industry practices, and information provided by designers or installers of the equipment or systems. The County will implement maintenance procedures for these items.

8.2 Non-Revenue Vehicles and Equipment

The County will provide Non-Revenue Vehicles to be used in support of the Seattle Streetcar operation. The costs of such vehicles will be included as provided for in Exhibit E.

8.3 Tools and Equipment

The City of Seattle will provide all special tools or test equipment that the County will use to perform its duties under this Agreement.

8.4 Documentation

The City will provide the County with copies of all as-built drawings and maintenance manuals for Seattle Streetcar facilities and equipment.

8.5 Configuration Management

The City will be responsible for configuration management. The county may propose changes to Seattle Streetcar capital assets via a change proposal consistent with the System Safety Program Plan. The City will be responsible for the configuration management component of any audit conducted by a regulatory agency having oversight responsibility for the Seattle Streetcar. The County will assist the City in preparation for the audit. The City will provide the County with copies of all Configuration Management documents.

8.6 Facilities and Equipment Maintenance

The responsibilities for maintenance of Seattle Streetcar facilities and equipment are delineated in Exhibit D.

8.7 Vehicle Maintenance

As identified in Exhibit D, the County will be responsible for maintaining the Seattle Streetcar vehicles.

- a. Heavy Repair and Major Overhaul.** The County shall analyze options for heavy repair and major overhauls of streetcars and present the options to the City for mutual written agreement concerning scope, cost, and schedule for such work. These are not considered ongoing maintenance and all costs for this work

will be borne by the City. The City and County will agree on a streetcar vehicle overhaul cycle.

b. Component Repair. The County will conduct all component repairs.

c. Maintenance of Car History. The City will cause the carbuilder to deliver Car History Books to the County.

8.8 Systems and Electrical Maintenance

As identified in Exhibit D, the County will be responsible for all maintenance of Seattle Streetcar electrical facilities and systems. This will include both hardware and software elements of traction power substations, overhead contact system, electrical switchgear, yard and shop power distribution and lighting, fire alarms, and electrical facilities. The City will be responsible for maintenance of traffic signals including train-to-wayside communications (TWC) equipment connected to the traffic signal system controls. TWC equipment on the streetcars will be maintained by the County.

9.0 Customer Service, Information, and Marketing

9.1 Overview

The County will be responsible for providing customer information for the Seattle Streetcar. The County shall compile and print schedules for public dissemination and posting at stations. The Parties agree to coordinate and, at times, work jointly in marketing the Seattle Streetcar service, including special events.

9.2 Fare Media Sales

The County will be responsible for fare media sales.

9.3 Sign Hardware and Changeable Message System

As part of startup, the City will prepare station and vehicle signage. Sizes are to conform to existing County signs for interchangeability. The County agrees to assist the City in locating signs and maps. If the City elects to request County assistance in preparation of the signage, those costs will be reimbursed as provided for in Section 16.3.3.

9.4 Media Relations

Except as otherwise identified in this Agreement, the County shall be responsible for maintaining communications with the media about the Seattle Streetcar. The County shall be solely responsible for maintaining communications with the media about any incidents or accidents involving the Seattle Streetcar. The City shall be responsible for media communication about construction activities prior to the start date of revenue service operations.

10.0 Safety

10.1 System Safety Program Plan

The County will maintain a System Safety Program Plan (SSPP) in accordance with 49 CFR 659.

10.2 Safety Oversight

The Washington State Department of Transportation (WSDOT) will conduct a triennial audit of the Seattle Streetcar's SSPP. The City and the County will develop corrective action plans to respond to any noted deficiencies. The cost of the audit charged by the state and the County's cost in facilitating the audit and creating the corrective plan shall be paid by the City.

10.3 System Security Plan

Metro will include the Seattle Streetcar in its System Security Plan, All-Hazards Response Plans and associated training and exercise programs.

11.0 Code of Conduct

The County will apply and enforce its code of conduct on the Seattle Streetcar and Seattle Streetcar stations pursuant to Ch. 28.96 KCC and its implementing administrative policies and procedures.

12.0 Administration

12.1 Personnel

The County will be solely responsible for managing its Streetcar personnel. The County will apply its policies and procedures regarding recruitment, discipline, appearance, drug use and drug testing.

12.2 Benefits and Records

The County will handle all payroll, benefits and employee records for its personnel operating and maintaining the Seattle Streetcar.

13.0 Audits, Inspections, and Reports

13.1 Audits

The City, County Auditor, the State Auditor, federal auditors, and their representatives may audit either party's records relative to the Seattle Streetcar.

13.2 Record retention

Records pertaining to the Seattle Streetcar shall be retained by the Parties as specified by their respective record retention schedules.

14.0 Performance Requirements and Reporting

14.1 Ridership Reporting

Ridership, National Transit Database, and performance data will be compiled and reported using a methodology established prior to the first day of service.

15.0 Material and Warranty Management

15.1 Warranty Administration

The County will process warranty claims for Seattle Streetcar vehicles, systems, and equipment through its existing warranty claims process, to the full extent of warranty coverage. Warranty claims will be submitted directly to the responsible manufacturer or vendor. In the event that a vendor or manufacturer contests a warranty claim made by the County, the County will immediately notify the City of the dispute, and will provide all information about the claim to the City.

15.2 Material Management

During Startup, the City will purchase the manufacturers' recommended Start-Up Quantities of spare parts. The County will thereafter maintain inventory levels and other supplies and consumables to maintain Seattle Streetcar vehicles and equipment.

16.0 Compensation

16.1 Start-up and Operating Phases

This section defines how the City will compensate the County for its work associated with Seattle Streetcar start-up and operation. Compensation will vary during the three phases of operation; Start-up, Phase 1, and Phase 2.

16.2 Start up Costs

The City will compensate the County for agreed-upon costs during the Start-Up Period as shown in Exhibit E and as amended upon mutual agreement of the parties in writing.

16.3 Operating and Maintenance Cost

Operating and Maintenance Cost (O&M Cost) refers to the annual cost of the County's work to provide the scheduled level of service identified in the Seattle Streetcar Service Plan and in this Agreement beginning on the first day of revenue passenger operations. O&M Cost will be estimated annually for the coming calendar year, with costs for the following year identified no later than October 31 based on the agreed upon service plan for that year. O&M Cost will include direct and indirect costs of staff involved in carrying out the work described in this agreement and the overhead support for that staff. In addition, materials and supplies associated with maintaining and operating the system will be included in O&M Cost. The methodology for calculating O&M costs is included in Exhibit E. Payment of the O&M costs shall be as follows:

16.3.1 Phase 1. The City will pay the County 100% of the estimated O&M costs remaining after fare revenue has been subtracted from costs as identified in Exhibit E.

16.3.2 Phase 2. The City will pay the County 25% of the estimated O&M costs remaining after the fare revenue has been subtracted from costs, as identified in Exhibit E.

16.3.3 Other mutually agreed upon costs related to the Streetcar shall be reimbursed by the City to the County based on costs agreed upon in advance of the expenditure as provided in Sections 16.5 or 16.6 herein.

16.3.4 As described in section 26.2. The Parties intend to amend the operating agreement prior to December 31, 2014 to address operations beyond Phase 2.

16.4 Fares

Fares will be consistent with County fare policies; provided that the County, as a policy, may decide that transfers will not be issued to riders paying cash or the equivalent electronic media. Fares collected for the streetcar will be calculated as described in Exhibit E.

16.5 Adjustment of Costs due to Changes in Service Plan

Any change in compensation due to changes in the Service Plan during the year, including costs associated with special events requested by the city, will be calculated by the County and included in the monthly invoice for the month in which they occurred.

16.6 Other Operating and Maintenance Cost Adjustments

The Parties acknowledge that there may be unforeseen, non-recurring costs such as emergencies or other material costs arising from circumstances beyond the County's control. In an emergency, the County will notify the City of an upcoming expenditure as provided for in Exhibit E. The City Director of Transportation may give oral approval of emergency expenditures, provided that, within two working days of receiving approval, the County will provide the City with a written description of the work, a proposed schedule for completion, and an estimated cost. In non-emergency cases, the County will provide the City with the written documentation described above prior to incurring any costs.

16.7 Invoices and Payment

The County shall submit a completed monthly invoice with the required reports to the City not later than the 25th of the month for services provided during the previous month. Prior to the beginning of revenue passenger service, the invoice will include actual costs of staffing and other agreed-upon costs.

During Start-up, the amount invoiced should include actual costs for the previous month.

During Phase 1, the amount invoiced should include one-twelfth of the O&M Cost and any cost adjustments that the City has agreed to pay for the current year minus monthly fare revenue.

During Phase 2, the amount invoiced should include one-twelfth of 25% of the difference of the O&M Cost minus monthly fare revenue, and any cost adjustments that the City has agreed to pay for the current year.

The invoice must be complete in order for it to be processed by the City. The City will notify the County within ten (10) working days if the invoice is defective. The City will pay the County within thirty (30) days of receipt of a completed invoice. The invoice will be submitted to:

Seattle Department of Transportation
Attention: Seattle Department of Transportation Major Projects Division Director
PO Box 34996
Seattle, WA 98124-4996

16.8 Annual Reconciliation

By May 1, or as soon as possible following that date, actual costs from the County's audited financial statement and fares for the previous year will be determined by the County. The difference between the City's portion of the actual operating and maintenance costs for the previous year and the sum of the invoices for that year will be credited or billed to the City so that the City's total payment for the previous year is equal to their actual costs minus fares.

16.9 System Expansion and Improvement

The City will retain responsibility for necessary improvements or modifications of vehicles, equipment or facilities required to support service levels agreed to in the Seattle Streetcar Service Plan, including track extensions or modifications, additional stations, increased substation capacity, traffic signal modifications and increased car fleet.

17.0 Federal Funding Requirements

In the event the City plans to utilize federal financial assistance to pay for any County work under this Agreement, it shall notify the County at least 120 days in advance of any such payment to the County, and meet with the County to determine costs and other impacts of such utilization. When federal funds are utilized, the County and City will meet to determine how the County will comply with any applicable federal contract and funding requirements. No such funding will relieve the city of its obligations to compensate the county under the terms of section 16 of this agreement.

18.0 Designated Representatives

The Parties shall designate representatives responsible for communication and coordination between the Parties. The representatives are responsible for coordinating the work of other staff members on the Seattle Streetcar project, the periodic reporting and review of documents required under this Agreement, preparation for the revision of this Agreement and its attachments, and for identifying and resolving issues.

19.0 Indemnification

19.1 Indemnity for Design

The City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from the design of the Seattle Streetcar project caused by the acts or omissions of the City, its officers, employees, agents, consultants and/or sub consultants of all tiers,. The City agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and

omissions of its own employees and agents. The City agrees to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of claims made by the City's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.2 Indemnity for Construction

The City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from the construction of the Seattle Streetcar project caused by the acts or omissions of the City, its officers, employees, agents, vendors, suppliers, contractors and/or subcontractors of all tiers,. The City agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The City agrees to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of claims made by the City's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.3 Indemnity for Manufacturer's Liability

The City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from the design, construction, manufacturer or modification of the streetcar trolleys provided for the Seattle Streetcar project caused by the acts or omissions of the City, its officers, employees, agents, vendors, suppliers and/or subcontractors of all tiers,. The City agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The City agrees to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of claims made by the City's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.4 Indemnity for City of Seattle Maintenance Responsibilities

The City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses,

damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from its Streetcar Maintenance Responsibilities as outlined in Exhibit D, now or as hereinafter amended, caused by the acts or omissions of the City, its officers, employees, agents, vendors, suppliers and/or subcontractors of all tiers,. The City agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The City agrees to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of claims made by the City's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.5 Indemnity for King County Maintenance Responsibilities

The County shall protect, defend, indemnify and save harmless the City, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from its Streetcar Maintenance Responsibilities as outlined in Exhibit D, now or as hereinafter amended, caused by the acts or omissions of the County, its officers, employees, agents, vendors, suppliers and/or subcontractors of all tiers,. The County agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The County agrees to indemnify and defend the City from any claim, demand, and/or cause of action brought by or on behalf of any of the County's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the County's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the City only, and only to the extent necessary to provide the City with a full and complete indemnity and defense of claims made by the County's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.6 General Indemnity

Each party shall indemnify the other party from any and all loss that arises out of, is connected with, or is due to the performance or non-performance of the indemnifying party's obligations set forth in this agreement.

19.7 Indemnity for Ordinance or Regulation

In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulation, policies or procedures. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy same, including all chargeable costs and attorney's fees.

19.8 Release and Waiver

Except as provided for in Section 19.1 through 19.6 above, each party releases, waives and forever discharges any and all causes of action against the other arising out of the Operation and Maintenance of the Seattle Streetcar.

19.9 Attorney Fees

In the event either party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section against the other party, all such fees, costs and expenses shall be recoverable by the prevailing party.

19.10 Allocation of Liability

The County and City agree that the administration, handling, defense and disposition of all Design, Construction and/or Manufacturers Liability claims arising out of the Seattle Street Car will be the responsibility of the City of Seattle as defined in Section 19 above. Upon the receipt of claims involving allegations of Design, Construction and/or Manufacturers Liability the City shall accept tender of that portion of said claims attributable to the allegations of Design, Construction and/or Manufacturers Liability. The County and the City agree to associate in the defense and control of any claim, suit or proceeding relative to an occurrence where the claim or suit involves or appears to involve allegations of Design, Construction and/or Manufacturers Liability and allegations arising out of the Operations and Maintenance of the Seattle Street Car in which event the County and the City shall cooperate in all things in the defense of such claim, suit or proceeding.

20.0 Insurance

20.1 Property Damage Insurance

The City shall insure the streetcars, spares, equipment, platforms and the streetcar maintenance facility under its property damage insurance coverage. In the event a City vehicle is so damaged that the City determines to replace it rather than have it repaired, such replacement vehicle shall be procured by the City at City expense. The City shall be solely responsible for its deductible and the prosecution and handling of all first party claims with its insurer(s). The City shall cause its insurer(s) to waive its rights of subrogation and the City's rights of recovery against the County.

20.2 Risk Management Program

The County maintains a Risk Management Program in accordance with Chapter 4.12 of the King County Code. The City understands, acknowledges and agrees that the County is self-funded for all of its liability exposures. The County agrees to maintain, through its self-funded program or an alternative risk of loss financing program, coverage for all of its liability exposures for the duration of this Agreement. The County agrees to provide the City with at least 30 days prior written notice of any material change in the County's self-funded program or alternative risk of loss financing program. The County agrees that nothing in this Section 20.2 or in the County's Risk Management Program shall limit or modify in any way the County's indemnity obligations under this Agreement.

20.3 Workers' Compensation

The County maintains a Safety and Workers' Compensation Program in accordance with RCW Chapter 51. The City understands, acknowledges and agrees that the County is self-funded for all of its Workers' Compensation liability exposures. The County agrees to maintain, through its self-funded program or an alternative risk of loss financing program, coverage for all of its Workers' Compensation liability exposures for the duration of this Agreement. The County agrees to provide the City with at least 30 days prior written notice of any material change in the County's self-funded program or alternative risk of loss financing program. The cost of including the Seattle Streetcar activities under this Agreement in its self-funded program or alternative risk of loss finance program shall be included in the calculation of the O&M cost and shall be subject to reconciliation adjustment as part of the Annual Review.

Should a County employee bring claim against the City arising out of a work related injury related to the Operation and Maintenance of the Seattle Streetcar, The County agrees to indemnify and defend the City from any claim, demand, and/or cause of action brought by or on behalf of any of the County's employees. The foregoing duty is specifically and expressly intended to constitute a waiver of the County's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the City only, and only to the extent necessary to provide the City with a full and complete indemnity and defense of claims made by the County's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

21.0 Claims Management

21.1 Process

Claims involving injuries to persons and property damage of others and recovery claims for injuries and damage to Seattle Streetcar personnel will be paid and handled, including defense of litigation, by the King County Risk Management Program in accordance with established claims handling practices. Workers' Compensation claims filed by Seattle Streetcar personnel, who are County employees, will be handled by the County's self-insured Workers' Compensation program.

21.2 Notice of Occurrence

Upon the happening of any occurrence or accident reasonably likely to involve participation by the City, written notice shall be given to the City as soon as practicable.

21.3 Assistance and Cooperation

The City shall not be called upon to assume charge of the settlement or defense of any claim made or suit brought or proceeding instituted against the County arising out of the Operations and Maintenance of the Seattle Streetcar but the City shall have the right and shall be given the opportunity, at its own expense, to associate with the County in the defense and control of any claim, suit or proceeding relative to an occurrence where the claim or suit involves or appears reasonable likely to involve the City's payment obligation in Section 20.2, in which event the County and the City shall cooperate in all things in the defense of such claim, suit or proceeding. The City and County further agree to fully cooperate in the enforcement of any right against any person or entity which may be liable

for the injury or damage arising out of the Operations and Maintenance of the Seattle Streetcar and or damage or impairment to any Seattle Streetcar asset.

21.4 Confidentiality

The parties hereby acknowledge that materials and information, in document form and oral, may be generated by the claims management process that, under applicable law, may be kept confidential and privileged ("Confidential Materials"). Such Confidential Materials are presumed to include, but are not necessarily limited to:

- a. statements of potential witnesses;
- b. legal advice, notes, or memoranda of legal counsel;
- c. information assembled and reports prepared by consulting and potentially testifying experts ;
- d. statements, documents, and information regarding preparation, strategy, and tactics for litigation or other dispute resolution process.

The parties intend by this Agreement to protect the privileged and confidential nature of any Confidential Materials. Each party agrees that all oral and/or written Confidential Materials received from one of the other parties shall be held in strictest confidence and shall not be given, shown, made available, communicated or otherwise disclosed in any way to anyone outside of the City and the County without the express consent of the party from whom the Confidential Materials were received, except pursuant to a judicial order to disclose the materials. If either the City or the County receives a request from an outside party for Confidential Materials, the recipient of the request shall immediately notify the other party to this Agreement, who shall be entitled to bring a motion in court to oppose the request. The recipient of the request may also bring a motion to oppose the request, but is not obligated to do so.

22.0 Hazardous Substance

22.1 Indemnification.

City agrees to indemnify, defend and hold County its appointed and elected officials, employees, from and against any and all claims, liabilities, damages, and expenses, including reasonable attorney's fees, asserted against County by a third party, including without limitation, any agency or instrumentality of the federal government, state or local government, for bodily injury, including death of a person, physical damage to or loss of use of property, or clean-up activities (including but not limited to investigation, study, response, remedial action, or removal), fines or penalties arising out of or relating to the presence, release, or threat of release of a Hazardous Substance existing or emanating from the premises, except to the extent caused by the act or omission of County. The obligations under this paragraph shall survive the expiration or other termination of this agreement.

22.2 Definition of Hazardous Substances

"Hazardous Substances" as defined in this agreement shall mean:

- a. Any toxic substances or waste, sewage, petroleum products, radioactive substances, medicinal, bacteriological, or disease-producing substances; or

- b. Any dangerous waste, hazardous waste, or hazardous substance as defined in:
 - i. Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereinafter amended (42 U.S.C. 9601 et seq.);
 - ii. Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. 6901 et seq.);
 - iii. Hazardous Waste Management Act and Washington Model Toxics Control Act, as now or hereinafter amended (R.C.W. Chs. 70.105, and 70.105D); or
- c. Any other pollutant, contaminants, or substances, posing a danger or threat to public health or welfare, or to the environment, which are regulated or controlled by any federal, state and local laws, and regulation, as now or hereafter amended.

23.0 Dispute Resolution

The City and the County agree to use their best efforts to resolve any disputes arising under this Agreement using good faith negotiations. The City's Seattle Streetcar Project Manager and the County's Light Rail Manager shall communicate regularly to discuss the status of the tasks and services to be performed and to prevent disputes from arising. Except as otherwise provided in this Agreement, the Parties agree to use the following dispute resolution process.

23.1 Step One

The City's Department of Transportation Major Projects Division Director and the County's Light Rail Manager shall confer and attempt to resolve the dispute within ten (10) business days of written notification by either party.

23.2 Step Two

In the event the City's Department of Transportation Major Projects Division Director and the County's Light Rail Manager are unable to resolve the dispute within ten (10) business days as provided in Step One, either Party may refer the dispute to the City's Director of Transportation and the County's Transit General Manager. They shall confer and attempt to resolve the dispute within ten (10) business days of receiving the referral.

23.3 Prerequisite to Litigation

Neither Party shall have the right to seek relief in a court of law until and unless these first two procedural steps in Section 23.1-23.2 are exhausted.

23.4 Mediation

In the event the Parties are unable to resolve the dispute utilizing the process set forth in Sections 23.1-23.2, the Parties may, by agreement, choose to submit the matter to a non-binding mediator. The Parties shall share equally in the cost of the mediator. Mediation shall not be a prerequisite to litigation.

23.5 Continued Performance

At all times during the course of the conflict or dispute resolution efforts, the Parties agree to continue to perform their respective responsibilities under this Agreement with due diligence.

24.0 Termination

24.1 Default

Either Party may terminate this Agreement in writing if the other Party substantially fails to fulfill any material obligation under this Agreement through no fault of the terminating Party, provided that insofar as practicable, the Party terminating the Agreement will give:

- a. Written notice of intent to terminate no less than 30 days prior to the date of termination stating how the other Party has failed to perform the obligations under this Agreement; and
- b. An opportunity for the other Party to cure the default within a specified time, not to exceed 30 days, from the date of notice of the intent to terminate. The notice of intent to terminate shall state the time period within which cure is permitted and any other appropriate conditions.

If the other Party fails to remedy the default or the breach to the satisfaction of the other Party within the time period established in the notice of termination or any extension thereof, granted by the terminating Party, the Agreement shall be deemed terminated.

24.2 For Convenience.

Either Party may terminate this Agreement, in writing, for its convenience provided that the other Party will be given:

- a. Written notice of intent to terminate no less than 180 days prior to the intended termination date;
- b. Opportunity for consultation with the Party initiating the termination prior to the termination date; and
- c. Provided, however, the County's obligation to perform the work of this Agreement beyond the current appropriation year is conditional upon appropriation by King County of sufficient funds to support said work. Should such an appropriation not be enacted, this Agreement will terminate automatically at the close of the then-current appropriation year. The appropriation year ends on December 31 of each year.

24.3 Activities upon Termination and Expiration

Upon termination of this Agreement by expiration of the term or as provided in this Section, the City and the County agree to work together cooperatively to develop a coordinated plan for terminating the services rendered up until the time of termination, determining reasonable contract close-out costs for termination for convenience or termination by the County for the City's breach and accounting and transfer of equipment provided by the City in the manner the City directs. In the event of termination for a County default or breach,

the City shall compensate the County only for the services satisfactorily rendered to the date of termination at the rates and amounts and in the manner provided in this Agreement, with no payment for contract closeout costs as otherwise provided in this Section.

25.0 General Provisions

25.1 Rights and Remedies

The rights and remedies of the Parties to the Agreement are in addition to any other rights and remedies provided by law, except as otherwise provided in this Agreement.

25.2 No Joint Venture or Partnership

No joint venture or partnership is formed as a result of this Agreement.

25.3 No Third Party Rights

It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties.

25.4 Compliance with Laws

25.4.1 In General

Each Party shall comply, and to the best of its ability shall ensure, that its employees, agents, consultants, contractors and representatives comply with all federal, state, and local law, regulations, and ordinances, including, but not limited to, applicable public works and procurements laws and regulations, bonding, prevailing wage, nondiscrimination, retainage, insurance, and workers compensation requirements.

25.4.2 Licensing and Certification of Employees

Each Party shall comply, and to the best of its ability shall ensure, that its employees, agents, consultants, contractors and representatives comply with all federal, state and local licensing, registration, filing and/or certification standards, all applicable accrediting standards, and any other standards or criteria established by any agency of the State of Washington or of the federal government applicable to the work or services for which it is responsible under this Agreement.

25.5 Venue

Any legal action between the Parties with regard to this Agreement shall be brought in the Superior Court of King County.

25.6 No Employee Relationship

Each Party and its employees, agents, consultants and representatives shall not be deemed or construed to be employees or agents of the other Party. No employee, agent, consultant or representative of either Party shall make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the other Party. Each Party shall be solely responsible for any claims for wages or compensation by its employees, agents,

and representatives, including consultants and shall indemnify and hold the other Party harmless from any such claims.

25.7 Notice

All written notices required in this Agreement shall be either personally delivered, sent by certified mail, return receipt requested, postage prepaid, or sent by facsimile transmission (with confirmation receipt printed). All notices or requests shall be sent to the City and County addressed as follows:

King County: Transit General Manager
King County Metro Transit
201 South Jackson Street, Mailstop KSC-TR-0415
Seattle, Washington 98104-3856
Fax (206) 684-1778

City of Seattle: Director, Seattle Department of Transportation
P.O. Box 34996
Seattle, Washington 98124-4996
Fax (206) 684-5180

25.8 Waiver or Default

Waiver of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default and shall not be construed to be a modification of the terms of this Agreement.

25.9 Force Majeure

If any Party is rendered unable, wholly or in part, by a Force Majeure, to perform or comply with any obligation or condition of this Agreement then, upon giving notice and reasonably full particulars to the other Party, such obligation or condition shall be suspended only for the time and to the extent reasonably necessary to allow for performance and compliance and restore normal operations.

25.10 Assignment/subcontracting

No Party shall assign or subcontract any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment, contract or notation, without prior written consent by the other Party.

25.11 Binding on Successors and Assigns

This Agreement, together with all exhibits and attachments now or hereafter made a part, shall be binding on the Parties hereto and their respective, successors and assigns.

25.12 Severability

If any of the terms and conditions of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and conditions unaffected thereby shall remain in full force and effect. The Parties agree to negotiate in good faith to reform the Agreement to replace any invalid or unenforceable term and/or

condition with a valid and enforceable term and/or condition that comes as close as possible to the intention of the stricken term and/or condition.

25.13 Warranty of Right to Enter Into Agreement

The Parties each warrant they have the authority to enter into this Agreement and that the persons signing this Agreement on behalf of each Party have the authority to bind that Party.

25.14 Exhibits

All exhibits referenced in and attached to this Agreement are incorporated by this reference.

25.15 Amendments and Modifications

This Agreement and its exhibits shall only be amended or modified by mutual agreement of the Parties in writing. Amendments and revisions to Exhibits A, C, D and E can be authorized and executed on behalf of the City by its Director of Transportation and on behalf of the County by its Transit General Manager. Exhibit B may be amended only by actions of both the Seattle City Council and the Metropolitan King County Council.

25.16 Survival of Certain Provisions

The following sections shall survive any termination or expiration of this Agreement:

Section 13.0 Audits, Inspections and reports
Section 19.0 Indemnification
Section 20.2 Risk Management Program
Section 20.3 Workers' Compensation
Section 22.0 Hazardous Substance
Section 23.0 Dispute Resolution
Section 24.0 Termination
Section 26.0 Effective Date and Term

25.17 Meetings

The parties will meet at least quarterly during 2008 and at least semi-annually thereafter to discuss necessary changes or adjustments to the Agreement's scope of work as new information, circumstances or technology become available. Such discussions will include opportunities to improve the efficiency of the operation and maintenance of the Seattle Streetcar.

26.0 Effective Date and Term

26.1 Effective Date and Term

This Agreement shall take effect upon its signing by both parties and shall expire on December 31, 2014.

26.2 Agreement Review

Eighteen (18) months prior to the end of the term, the City and the County will initiate a review process for consideration of whether the Parties will agree to extend the term of this Agreement for up to five (5) additional years. If the Parties agree to an extension of this Agreement, they shall execute a written extension, along with any amendments, at least

twelve (12) months prior to the expiration of this Agreement, or within such lesser time as may be agreed to by the Parties in writing.

26.3 Expiration

In the event the Parties do not execute an extension to this Agreement, it shall expire at the end of the term as specified in Section 26.1.

27.0 Execution of Agreement

This Agreement may be executed in counterparts, any one of which shall be regarded for all purposes as one original, but both of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth below their signatures.

King County
("The County")

City of Seattle
("The City")

Ronald Sims
King County Executive

Gregory J. Nickels
Mayor of Seattle

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Deputy Prosecuting Attorney

Assistant City Attorney

Date: _____

Date: _____

Exhibit A

Definitions

Accident: An unexpected loss-causing event that results in a fatality, bodily injury, or property damage.

Bus Bridge: A substitute bus service operated in place of rail service when all or a portion of a rail transit line is out of service.

Capital Improvements: Placement of new assets into the streetcar system characterized by one-time cost exceeding One Thousand Dollars (\$1,000) and having a life expectancy exceeding one year.

Capital Repairs: Repair intended to extend the life of an existing asset having a one-time cost exceeding One Thousand Dollars (\$1,000) with a life expectancy exceeding one year.

Car History Book: A record maintained by the carbuilder that shows all modifications to the car during its construction, including quality control exceptions and their corrections.

Changeable Message System: A system for providing information to the public by means of electrically illuminated signs which may be easily changed as needed.

Component Repair: Restoration of a component to reliable operative condition.

Configuration Management: The control and documentation of changes that are made to the hardware, software, firmware, and documentation throughout the life of a system.

Emergency: As used in section 16.6, emergency refers to an unexpected disruption of streetcar service due to a defect in the streetcar infrastructure, having a cost of repair exceeding \$5,000.

Emergency Operations: Refers to operations of the streetcar system when a portion of the system is inoperative due to defect, blockage of the track, or other disruption.

Equipment: The streetcar rolling stock. Also, articles used to equip the streetcar facility.

Fixed Physical Plant: Those elements of the streetcar system that are immobile in character; such as track, buildings, overhead wires, station platforms, etc.

Fleet-wide Modifications: Changes to streetcars that affect the entire inventory of cars of a particular type.

Force Majeure: Any delay resulting from any cause beyond a Party's reasonable control resulting in the Party's inability to perform its obligations under this Agreement. The causes may include, but are not limited to, acts of nature, accident, fire, strikes, delays resulting from legal or administrative challenge by parties other than the signatories to this Agreement, etc.

Heavy Repair: Any repair of a car system that requires its removal from the car in order to do the work, or any repair of damage requiring restoration of structural parts.

Incident: A specific event or circumstance that has a negative effect on operations.

Maintenance: Performing work to prevent degraded performance of a system or sub-system.

Maintenance Procedure: A written set of instructions describing the work to be done and the proper sequence of actions to be taken to maintain any component of the streetcar system.

Major Overhaul: A process that restores a worn subsystem or device to nearly new condition.

MMIS: Maintenance Management Information System.

Non-revenue vehicles: Vehicles used in support of transit operations that do not carry passengers for fare.

Operating Phases:

Startup: The period between the effective date of the Seattle Streetcar Operations and Maintenance Agreement and 12:01 AM of the first day of revenue passenger service .

Phase 1: The period between 12:01 AM of the first day of revenue passenger service and 12:01 AM of the first day of the service change following the start of Link Light Rail service .

Phase 2: The period between the end of Phase 1 and 11:59 PM December 31, 2014.

Operations Plan: The County's plans for regular service operations, special services, emergency operations, and the operating procedures for the guidance of the County's staff.

Overhaul Cycle: The interval at which streetcars will be given an overhaul.

Pre-Revenue Service: Operation of streetcars in accordance with the proposed schedule that will be used after the beginning of revenue service, but without passengers. The "Pre-revenue Service" period is used to test the proposed schedule and to train personnel on the procedures to be used under normal and extraordinary conditions.

Seattle Streetcar: This term is used interchangeably with "South Lake Union Streetcar."

Seattle Streetcar Service Plan: The document that outlines the service to be provided by the Streetcar subject to annual review for changes. The plan sets forth hours of operation, headways, special operations, and other details of the service.

Special Event: An event that requires a deviation from the normal operating routine of the Streetcar. These may include extended hours of service for holidays, anticipated delays due to parades or construction work, and the opening of new Streetcar lines.

Startup Quantities: The quantity of spare parts and consumable items specified in contracts for streetcars and facilities as the initial volume of spare part stock provided by the contractor to be delivered before the closure of the contract.

System Safety Program Plan: A document developed by the transit agency describing its safety policies, objectives, responsibilities, and procedures

Support Vehicle: See Non-Revenue Vehicles.


Train-to-Wayside Communications: A system of digital communication between trains (streetcars) and equipment located along the wayside for the purpose of routing trains automatically to their destination and other uses.

Unusual Occurrence Report (UOR): A daily report created by Streetcar management for executive management. The UOR typically includes entries regarding delays to service, incidents, mechanical failures, and other unusual events.

Work: All work required to be provided by the County and its contractors under this Agreement, including all services, labor, equipment and materials, facilities and all other things necessary and proper for, or incidental to, start-up, and operating and maintaining the South Lake Union streetcar.

Exhibit B

LEGEND

-  Proposed Streetcar Alignment
-  Proposed Station Locations
-  Proposed Maintenance Facility Site



▲ NORTH Scale: 0 200 400



SOUTH LAKE UNION STREETCAR Route Alignment and Stop Locations



Exhibit C

Startup Responsibilities

City of Seattle

1. Approval of Streetcar Operations Plan
2. Cooperation with Metro in development and review of Streetcar Service Plan
3. Arrange for required utility connections and service to Streetcar facilities
4. Contract for any service not assigned to Metro, including capital repairs and replacement beyond normal maintenance of facilities and equipment
5. Test the facilities and equipment, conduct integrated testing, certify and commission systems
6. Select revenue passenger service date
7. Provide all special tools or test equipment needed by County to perform its duties under the Streetcar Agreement
8. Deliver equipment maintenance requirements and drawings to Metro
9. Obtain "Startup Quantity" of spare parts
10. Prepare Car and Station signage
11. Install Passenger Information System changeable signs
12. Marketing of the streetcar opening

King County

1. Develop Streetcar Service Plan, Operations Plan, System Safety Program Plan
2. Incorporate the Seattle Streetcar into Metro's System Security Plan
3. Comply with regulatory requirements
4. Hire and train staff
5. Develop and implement operating and maintenance procedures
6. Operate and maintain the streetcars
7. Consult with City regarding Revenue Passenger Service date
8. Assist with operational testing
9. Conduct emergency preparedness drills
10. Prepare train schedules, operator runs and car assignments
11. Prepare "Bus Bridge" plan
12. Provide Non-Revenue Vehicles
13. Arrange Lost and Found handling
14. Develop media relations procedures
15. Establish procedure to collect and report ridership, NTD, and performance data

Exhibit D

Seattle Streetcar Maintenance Responsibilities

City of Seattle

1. Utility Connections
2. Pavement
3. Traffic signals
4. Traffic signs
5. Streetcar signs
6. Pavement markings
7. Stations
8. Station landscaping
9. Lighting
10. Shelters and furnishings
11. Information posters
12. Poles – joint use
13. Track Drains – all except the portion between the rails
14. Driveway crossings – maintain pavement

King County

1. Wheel Truing
2. TWC on Cars
3. Radio
4. Maintenance Facility
5. Cranes
6. Shop Machines
7. Roll-up Doors
8. Phones and Networks
9. Track
10. Track Drains – between rails
11. Driveway crossings – maintain rails
12. Overhead centenary system
13. Trolley bus crossings
14. Poles – strain poles
15. Span wires
16. Substations
17. 750 VDC Vaults
18. Fencing

Exhibit E

Cost Methodology for payments by City to County

The City shall pay the County consistent with the following cost methodologies for costs incurred in streetcar activities:

Start-up Cost Methodology

Direct costs for staff dedicated to the Seattle Streetcar operation and maintenance activities, including salaries, benefits, overtime and a charge for workers compensation costs.

Direct and indirect costs for training and maintenance support from Metro's Power and Facilities Section for the OCS, substations, maintenance facility and trackway once turned over to the County for maintenance. Costs will include direct staff salaries and benefits, section administration, support vehicles and a charge for workers compensation costs.

Indirect and general administration costs including Transit Division and King County support services allocated based on methodology used for reporting to National Transit Database (NTD) and reflecting costs reported to NTD, and Light Rail Section administrative costs.

Direct materials and supplies, including parts, shop supplies and office equipment and supplies.

One time costs for incorporating Seattle Streetcar parts into the vehicle maintenance inventory system, adjustments to scheduling and customer information software systems, staff hiring and customer information signage.

Purchase of non-revenue vehicle(s) to support service operation.

O&M Cost Methodology

Direct costs for staff dedicated to the Seattle Streetcar operation and maintenance activities, including salaries, benefits, overtime and a charge for workers compensation costs.

Direct and indirect costs for maintenance support from Metro's Power and Facilities Section for the OCS, substations, maintenance facility and trackway. Costs will include direct staff salaries and benefits, section administration, support vehicles and a charge for workers compensation costs.

Indirect and general administration costs including Transit Division and King County support services allocated based on methodology used for reporting to National Transit Database (NTD) and reflecting costs reported to NTD, insurance premiums in proportion to the county's overall ridership, risk and claims costs associated with the streetcar as described in the terms of the agreement, and Light Rail Section administrative costs.

Direct materials and supplies, including parts, shop supplies and office equipment and supplies.

Other service provided by the County outside of the operating scope such as emergency operating and maintenance expenditures, bus bridges, body work, moving streetcars to other locations for major overhauls, etc. These and any other activities negotiated under separate agreements will be charged based on actual cost incurred.

2008 projected O&M costs are approximately \$2,000,000

Fare Calculation Methodology

Cash fares will be based on actual revenue collected through the on-board cash farebox.

Pass fare revenue will be established based on Metro's reimbursement from the regional fare account(s) based on ridership initially obtained via a passenger survey. When available, data from the regional fare coordination system (ORCA) will be used to determine the value of pass fare revenue.

When available for use, fares paid by electronic purse will be treated as if they were cash fares adjusted for any transfer activity.

If sufficient data is not collected electronically, fare revenue from transfers from other Metro services will be determined via a passenger survey conducted at least every 3 years.

Any special fare media used on the Seattle Streetcar will count as Seattle Streetcar revenue equal to the amount paid to Metro when the fare media was issued.

2008 projected fare revenue, based on current fares, is \$300,000.



Seattle Department of Transportation

Gregory J. Nickels, Mayor

Grace Crunican, Director

MEMORANDUM

Date: August 29, 2007

To: Seattle City Clerk's Office

From: Ethan Melone, SDOT

Subject: **Transmittal of Streetcar Operating Agreement for Clerk's File**

Attached for filing with Ordinance 122424 is the fully-executed agreement authorized by that ordinance.

CITY CLERK
11-1-07
11-1-07



Key Tower, 700 5th Avenue, Suite 3900, PO Box 34996, Seattle, WA 98124-4996
Tel: (206) 684-ROAD (684-7623), TTY/TDD (206) 684-4009, FAX: (206) 684-5180
Internet address: <http://www.seattle.gov/transportation>
An equal employment opportunity employer.
Accommodations for people with disabilities provided on request.

June 12, 2007

15860

INTERLOCAL AGREEMENT

between

King County and City of Seattle

for

Seattle Streetcar Operations and Maintenance

This AGREEMENT ("Agreement") is entered into this 20th day of August 2007, by and between the City of Seattle (hereinafter referred to as "the City") and King County (hereinafter referred to as "the County") and as may be referred to individually as "Party" and collectively as "Parties".

RECITALS

Whereas, pursuant to Chapters 36.56 RCW and 35.58 RCW and public vote, the County is authorized to perform metropolitan public transportation functions; and

Whereas, the City's authority for construction, acquisition, maintenance, operation, extension, alteration, repair, control and management of public transportation services is conditioned on the County's consent per RCW 35.58.260; and

Whereas, the County has approved in Ordinance 15860 the City's streetcar project from the Fairview Avenue N and Ward Street to Westlake Avenue and Olive Way in the City; and

Whereas the City had experience building a streetcar as owner and builder of the Waterfront Streetcar; and

Whereas, the City and the Municipality of Metropolitan Seattle (METRO) entered into a Waterfront Streetcar Operations Agreement on February 22, 1978; and

Whereas, the METRO assumed ownership of the Waterfront Streetcar from the City on November 1, 1985 pursuant to a transfer agreement between the City of Seattle and METRO; and

Whereas, the County has experience operating and maintaining streetcars in the City of Seattle and will operate and maintain Sound Transit's light rail system; and

Whereas, the City developed a Capital Finance and Operating and Maintenance Plan for the Seattle Streetcar in April 2005 that anticipates the re-allocation of King County Metro Transit bus service hours from the LINK Light Rail service area to the Seattle Streetcar and identifies other planned sources of funds to support the City's contribution to Seattle Streetcar operating and maintenance costs; and

Whereas, King County acknowledges the City's anticipation of reallocated bus service hours but reserves the right to determine the source of its share of Seattle Streetcar funding, consistent with adopted policies for allocating service among transit planning subareas; and

Whereas, City of Seattle taxpayers owning property within City of Seattle Local Improvement District 6750 are contributing \$25,700,000 toward the total cost to construct and equip a modern streetcar line serving Downtown Seattle, Denny Triangle and South Lake Union; and

Whereas, the City is procuring, through an agreement with the City of Portland, three streetcar vehicles of the similar design and specification as those operating on the City of Portland's Portland Streetcar and Sound Transit's Tacoma Streetcar lines; and

Whereas the parties believe it is in the best interest of the public to have the County operate and maintain the Seattle Streetcar once the City has constructed the facilities and procured the operating equipment;

NOW, THEREFORE, in consideration of the mutual terms and obligations contained herein, the Parties agree as follows:

1.0 Purpose and Scope of Agreement

1.1 Purpose and Scope

The Agreement, including attached exhibits, specifies the roles and responsibilities regarding the operation and maintenance of the Seattle Streetcar following construction by the City and during Startup and Passenger Service.

1.2 Definitions

Words, terms, and abbreviations used in this Agreement not defined in the body of this Agreement are defined in Exhibit A attached hereto.

2.0 Description

The terms of this agreement are limited to the segment of the Seattle Streetcar consisting of 1.3 miles of double track for passenger service, and 0.2 miles of maintenance facility lead track as shown in Exhibit B.

3.0 General

3.1 County Obligations

- a. Assist the City with Startup activities;
- b. Operate the Seattle Streetcar in accordance with Seattle Streetcar Service Plan.
- c. Comply with regulatory requirements affecting the operation of the Seattle Streetcar, including reporting to regulatory agencies (local, state, and federal).
- d. Develop and adopt the Seattle Streetcar Service Plan, Operations Plan, and System Safety Program Plan.

3.2 City Obligations

- a. Cooperate with the County in the development of the Seattle Streetcar Service Plan.
- b. Review the County's Seattle Streetcar Operations Plan for approval.
- c. Construct or procure all facilities, systems, equipment and vehicles, except as otherwise provided in the Agreement, in a condition that would allow the County to perform its obligations in a safe and efficient manner.
- d. Arrange for the required utility connections and service to Seattle Streetcar facilities.
- e. Undertake capital improvements and replacements of Seattle Streetcar facilities and equipment as necessary, including vehicles.
- f. Contract for any service not specifically assigned to the County under this Agreement, including capital repairs and replacement beyond normal maintenance of facilities and equipment.
- g. Provide special fare media, if required, for use on the Seattle Streetcar consistent with County requirements.
- h. Be responsible of all operations audits, including the Washington State Department of Transportation's triennial audit of the Seattle Streetcar System Safety Program Plan.

4.0 Ownership and Use of the Seattle Streetcar

Ownership of the Seattle Streetcar facilities and vehicles will remain with the City. The County will not use, or permit use by third parties of, the Seattle Streetcar facilities for any purpose other than operation and maintenance of the Seattle Streetcar except with approval or upon receiving direction by the City. The City retains the right to enter into sponsorship agreements associated with Seattle Streetcar facilities and vehicles. The County will provide access to the Seattle Streetcar facilities and vehicles for application of signage and graphics associated with such sponsorship.

The City is incorporating sustainable design features into the Seattle Streetcar maintenance facility. The County will provide access to the Seattle Streetcar facilities for evaluation of these design features.

5.0 Startup

The projected start date for revenue passenger service is December 1, 2007. The period preceding the start date for revenue passenger service is the "Startup Period". The Startup Period will be used to construct and prepare for operation of the Seattle Streetcar. Preparation for operation will include: hiring and training of staff, testing of facilities and equipment, certifying and commissioning of systems, and developing plans and procedures. Responsibility for the work during the Startup Period shall be allocated as set forth in Exhibit C.

The City will select the start date for revenue passenger service in consultation with the County within 30 days of execution of this agreement.

6.0 Service Planning and Scheduling

6.1 Seattle Streetcar Service Plan

The City will provide the County with a proposed service plan for 2007 and 2008 not later than 90 days prior to the start date of revenue passenger service and not later than March 30 each year thereafter for the coming calendar year. The proposed service plan will include headways and hours of operation. The City and County will meet to discuss the plan prior to the County's adoption of the final plan. If the parties cannot agree on the content of the plan, the dispute resolution process described in this Agreement shall be used to resolve any disagreement. The service plan may be amended during the year upon agreement of the parties in writing.

6.2 Scheduling and Staff Assignments

Based upon the adopted service plan, the County will prepare streetcar schedules and assignments of personnel and equipment to meet the requirements of the plan.

6.3 Special Events

The City will inform the County in writing at least 30 days prior to any special events that may affect streetcar service. The County will make every effort to provide personnel and equipment for special events not listed in the annual service plan per the City's request. Special events known when the proposed annual service plan is prepared by the City shall be specified in that plan. Special events may include non-revenue service operations associated with vehicle sponsorships.

7.0 Operations

7.1 Operations Plan

The County will develop plans for regular service operations, special services, and emergency operations. The County will develop operating procedures for the guidance of its staff. Together, these plans will constitute the Seattle Streetcar Operations Plan (Operations Plan). The Operations Plan will be presented to the City at least three (3) months prior to the anticipated date of the first day of revenue passenger service for the City's review and approval, such approval not to be unreasonably withheld, delayed or conditioned. Any significant revisions to the Operations Plan will require the City's review and approval.

7.2 Unusual Occurrence Report

The County will send a copy of its daily Unusual Occurrence Report covering Seattle Streetcar operations at the end of each day's operation. This report will include any delays to trains exceeding 10 minutes, any accidents resulting in serious injury or serious damage to streetcar equipment. The County will give an immediate report of any accident or incident resulting in notice being given to the media, or which can reasonably be expected to be reported in the public media. This notice to the City should be given as soon as practicable after the County has dispatched its response personnel to deal with the incident.

7.3 Bus Bridge

In case of Streetcar service disruption, the County will arrange for substitute bus service, subject to vehicle availability, in accordance with its existing Standard Operating Procedure governing such service. The City shall reimburse the County for the cost of the substitute bus service as provided herein.

8.0 Maintenance

8.1 Overall Services

The County shall undertake its maintenance responsibilities as described in this Section 8 in accordance with the manufacturer's recommendations, warranty requirements, industry practices, and information provided by designers or installers of the equipment or systems. The County will implement maintenance procedures for these items.

8.2 Non-Revenue Vehicles and Equipment

The County will provide Non-Revenue Vehicles to be used in support of the Seattle Streetcar operation. The costs of such vehicles will be included as provided for in Exhibit E.

8.3 Tools and Equipment

The City of Seattle will provide all special tools or test equipment that the County will use to perform its duties under this Agreement.

8.4 Documentation

The City will provide the County with copies of all as-built drawings and maintenance manuals for Seattle Streetcar facilities and equipment.

8.5 Configuration Management

The City will be responsible for configuration management. The county may propose changes to Seattle Streetcar capital assets via a change proposal consistent with the System Safety Program Plan. The City will be responsible for the configuration management component of any audit conducted by a regulatory agency having oversight responsibility for the Seattle Streetcar. The County will assist the City in preparation for the audit. The City will provide the County with copies of all Configuration Management documents.

8.6 Facilities and Equipment Maintenance

The responsibilities for maintenance of Seattle Streetcar facilities and equipment are delineated in Exhibit D.

8.7 Vehicle Maintenance

As identified in Exhibit D, the County will be responsible for maintaining the Seattle Streetcar vehicles.

- a. Heavy Repair and Major Overhaul.** The County shall analyze options for heavy repair and major overhauls of streetcars and present the options to the City for mutual written agreement concerning scope, cost, and schedule for such work. These are not considered ongoing maintenance and all costs for this work

will be borne by the City. The City and County will agree on a streetcar vehicle overhaul cycle.

b. Component Repair. The County will conduct all component repairs.

c. Maintenance of Car History. The City will cause the carbuilder to deliver Car History Books to the County.

8.8 Systems and Electrical Maintenance

As identified in Exhibit D, the County will be responsible for all maintenance of Seattle Streetcar electrical facilities and systems. This will include both hardware and software elements of traction power substations, overhead contact system, electrical switchgear, yard and shop power distribution and lighting, fire alarms, and electrical facilities. The City will be responsible for maintenance of traffic signals including train-to-wayside communications (TWC) equipment connected to the traffic signal system controls. TWC equipment on the streetcars will be maintained by the County.

9.0 Customer Service, Information, and Marketing

9.1 Overview

The County will be responsible for providing customer information for the Seattle Streetcar. The County shall compile and print schedules for public dissemination and posting at stations. The Parties agree to coordinate and, at times, work jointly in marketing the Seattle Streetcar service, including special events.

9.2 Fare Media Sales

The County will be responsible for fare media sales.

9.3 Sign Hardware and Changeable Message System

As part of startup, the City will prepare station and vehicle signage. Sizes are to conform to existing County signs for interchangeability. The County agrees to assist the City in locating signs and maps. If the City elects to request County assistance in preparation of the signage, those costs will be reimbursed as provided for in Section 16.3.3.

9.4 Media Relations

Except as otherwise identified in this Agreement, the County shall be responsible for maintaining communications with the media about the Seattle Streetcar. The County shall be solely responsible for maintaining communications with the media about any incidents or accidents involving the Seattle Streetcar. The City shall be responsible for media communication about construction activities prior to the start date of revenue service operations.

10.0 Safety

10.1 System Safety Program Plan

The County will maintain a System Safety Program Plan (SSPP) in accordance with 49 CFR 659.

10.2 Safety Oversight

The Washington State Department of Transportation (WSDOT) will conduct a triennial audit of the Seattle Streetcar's SSPP. The City and the County will develop corrective action plans to respond to any noted deficiencies. The cost of the audit charged by the state and the County's cost in facilitating the audit and creating the corrective plan shall be paid by the City.

10.3 System Security Plan

Metro will include the Seattle Streetcar in its System Security Plan, All-Hazards Response Plans and associated training and exercise programs.

11.0 Code of Conduct

The County will apply and enforce its code of conduct on the Seattle Streetcar and Seattle Streetcar stations pursuant to Ch. 28.96 KCC and its implementing administrative policies and procedures.

12.0 Administration

12.1 Personnel

The County will be solely responsible for managing its Streetcar personnel. The County will apply its policies and procedures regarding recruitment, discipline, appearance, drug use and drug testing.

12.2 Benefits and Records

The County will handle all payroll, benefits and employee records for its personnel operating and maintaining the Seattle Streetcar.

13.0 Audits, Inspections, and Reports

13.1 Audits

The City, County Auditor, the State Auditor, federal auditors, and their representatives may audit either party's records relative to the Seattle Streetcar.

13.2 Record retention

Records pertaining to the Seattle Streetcar shall be retained by the Parties as specified by their respective record retention schedules.

14.0 Performance Requirements and Reporting

14.1 Ridership Reporting

Ridership, National Transit Database, and performance data will be compiled and reported using a methodology established prior to the first day of service.

15.0 Material and Warranty Management

15.1 Warranty Administration

The County will process warranty claims for Seattle Streetcar vehicles, systems, and equipment through its existing warranty claims process, to the full extent of warranty coverage. Warranty claims will be submitted directly to the responsible manufacturer or vendor. In the event that a vendor or manufacturer contests a warranty claim made by the County, the County will immediately notify the City of the dispute, and will provide all information about the claim to the City.

15.2 Material Management

During Startup, the City will purchase the manufacturers' recommended Start-Up Quantities of spare parts. The County will thereafter maintain inventory levels and other supplies and consumables to maintain Seattle Streetcar vehicles and equipment.

16.0 Compensation

16.1 Start-up and Operating Phases

This section defines how the City will compensate the County for its work associated with Seattle Streetcar start-up and operation. Compensation will vary during the three phases of operation; Start-up, Phase 1, and Phase 2.

16.2 Start up Costs

The City will compensate the County for agreed-upon costs during the Start-Up Period as shown in Exhibit E and as amended upon mutual agreement of the parties in writing.

16.3 Operating and Maintenance Cost

Operating and Maintenance Cost (O&M Cost) refers to the annual cost of the County's work to provide the scheduled level of service identified in the Seattle Streetcar Service Plan and in this Agreement beginning on the first day of revenue passenger operations. O&M Cost will be estimated annually for the coming calendar year, with costs for the following year identified no later than October 31 based on the agreed upon service plan for that year. O&M Cost will include direct and indirect costs of staff involved in carrying out the work described in this agreement and the overhead support for that staff. In addition, materials and supplies associated with maintaining and operating the system will be included in O&M Cost. The methodology for calculating O&M costs is included in Exhibit E. Payment of the O&M costs shall be as follows:

16.3.1 Phase 1. The City will pay the County 100% of the estimated O&M costs remaining after fare revenue has been subtracted from costs as identified in Exhibit E.

16.3.2 Phase 2. The City will pay the County 25% of the estimated O&M costs remaining after the fare revenue has been subtracted from costs, as identified in Exhibit E.

16.3.3 Other mutually agreed upon costs related to the Streetcar shall be reimbursed by the City to the County based on costs agreed upon in advance of the expenditure as provided in Sections 16.5 or 16.6 herein.

16.3.4 As described in section 26.2. The Parties intend to amend the operating agreement prior to December 31, 2014 to address operations beyond Phase 2.

16.4 Fares

Fares will be consistent with County fare policies; provided that the County, as a policy, may decide that transfers will not be issued to riders paying cash or the equivalent electronic media. Fares collected for the streetcar will be calculated as described in Exhibit E.

16.5 Adjustment of Costs due to Changes in Service Plan

Any change in compensation due to changes in the Service Plan during the year, including costs associated with special events requested by the city, will be calculated by the County and included in the monthly invoice for the month in which they occurred.

16.6 Other Operating and Maintenance Cost Adjustments

The Parties acknowledge that there may be unforeseen, non-recurring costs such as emergencies or other material costs arising from circumstances beyond the County's control. In an emergency, the County will notify the City of an upcoming expenditure as provided for in Exhibit E. The City Director of Transportation may give oral approval of emergency expenditures, provided that, within two working days of receiving approval, the County will provide the City with a written description of the work, a proposed schedule for completion, and an estimated cost. In non-emergency cases, the County will provide the City with the written documentation described above prior to incurring any costs.

16.7 Invoices and Payment

The County shall submit a completed monthly invoice with the required reports to the City not later than the 25th of the month for services provided during the previous month. Prior to the beginning of revenue passenger service, the invoice will include actual costs of staffing and other agreed-upon costs.

During Start-up, the amount invoiced should include actual costs for the previous month.

During Phase 1, the amount invoiced should include one-twelfth of the O&M Cost and any cost adjustments that the City has agreed to pay for the current year minus monthly fare revenue.

During Phase 2, the amount invoiced should include one-twelfth of 25% of the difference of the O&M Cost minus monthly fare revenue, and any cost adjustments that the City has agreed to pay for the current year.

The invoice must be complete in order for it to be processed by the City. The City will notify the County within ten (10) working days if the invoice is defective. The City will pay the County within thirty (30) days of receipt of a completed invoice. The invoice will be submitted to:

Seattle Department of Transportation
Attention: Seattle Department of Transportation Major Projects Division Director
PO Box 34996
Seattle, WA 98124-4996

16.8 Annual Reconciliation

By May 1, or as soon as possible following that date, actual costs from the County's audited financial statement and fares for the previous year will be determined by the County. The difference between the City's portion of the actual operating and maintenance costs for the previous year and the sum of the invoices for that year will be credited or billed to the City so that the City's total payment for the previous year is equal to their actual costs minus fares.

16.9 System Expansion and Improvement

The City will retain responsibility for necessary improvements or modifications of vehicles, equipment or facilities required to support service levels agreed to in the Seattle Streetcar Service Plan, including track extensions or modifications, additional stations, increased substation capacity, traffic signal modifications and increased car fleet.

17.0 Federal Funding Requirements

In the event the City plans to utilize federal financial assistance to pay for any County work under this Agreement, it shall notify the County at least 120 days in advance of any such payment to the County, and meet with the County to determine costs and other impacts of such utilization. When federal funds are utilized, the County and City will meet to determine how the County will comply with any applicable federal contract and funding requirements. No such funding will relieve the city of its obligations to compensate the county under the terms of section 16 of this agreement.

18.0 Designated Representatives

The Parties shall designate representatives responsible for communication and coordination between the Parties. The representatives are responsible for coordinating the work of other staff members on the Seattle Streetcar project, the periodic reporting and review of documents required under this Agreement, preparation for the revision of this Agreement and its attachments, and for identifying and resolving issues.

19.0 Indemnification

19.1 Indemnity for Design

The City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from the design of the Seattle Streetcar project caused by the acts or omissions of the City, its officers, employees, agents, consultants and/or sub consultants of all tiers,. The City agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and

omissions of its own employees and agents. The City agrees to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of claims made by the City's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.2 Indemnity for Construction

The City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from the construction of the Seattle Streetcar project caused by the acts or omissions of the City, its officers, employees, agents, vendors, suppliers, contractors and/or subcontractors of all tiers,. The City agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The City agrees to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of claims made by the City's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.3 Indemnity for Manufacturer's Liability

The City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from the design, construction, manufacturer or modification of the streetcar trolleys provided for the Seattle Streetcar project caused by the acts or omissions of the City, its officers, employees, agents, vendors, suppliers and/or subcontractors of all tiers,. The City agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The City agrees to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of claims made by the City's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.4 Indemnity for City of Seattle Maintenance Responsibilities

The City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses,

damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from its Streetcar Maintenance Responsibilities as outlined in Exhibit D, now or as hereinafter amended, caused by the acts or omissions of the City, its officers, employees, agents, vendors, suppliers and/or subcontractors of all tiers,. The City agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The City agrees to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of claims made by the City's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.5 Indemnity for King County Maintenance Responsibilities

The County shall protect, defend, indemnify and save harmless the City, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from its Streetcar Maintenance Responsibilities as outlined in Exhibit D, now or as hereinafter amended, caused by the acts or omissions of the County, its officers, employees, agents, vendors, suppliers and/or subcontractors of all tiers,. The County agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The County agrees to indemnify and defend the City from any claim, demand, and/or cause of action brought by or on behalf of any of the County's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the County's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the City only, and only to the extent necessary to provide the City with a full and complete indemnity and defense of claims made by the County's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.6 General Indemnity

Each party shall indemnify the other party from any and all loss that arises out of, is connected with, or is due to the performance or non-performance of the indemnifying party's obligations set forth in this agreement.

19.7 Indemnity for Ordinance or Regulation

In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulation, policies or procedures. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy same, including all chargeable costs and attorney's fees.

19.8 Release and Waiver

Except as provided for in Section 19.1 through 19.6 above, each party releases, waives and forever discharges any and all causes of action against the other arising out of the Operation and Maintenance of the Seattle Streetcar.

19.9 Attorney Fees

In the event either party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section against the other party, all such fees, costs and expenses shall be recoverable by the prevailing party.

19.10 Allocation of Liability

The County and City agree that the administration, handling, defense and disposition of all Design, Construction and/or Manufacturers Liability claims arising out of the Seattle Street Car will be the responsibility of the City of Seattle as defined in Section 19 above. Upon the receipt of claims involving allegations of Design, Construction and/or Manufacturers Liability the City shall accept tender of that portion of said claims attributable to the allegations of Design, Construction and/or Manufacturers Liability. The County and the City agree to associate in the defense and control of any claim, suit or proceeding relative to an occurrence where the claim or suit involves or appears to involve allegations of Design, Construction and/or Manufacturers Liability and allegations arising out of the Operations and Maintenance of the Seattle Street Car in which event the County and the City shall cooperate in all things in the defense of such claim, suit or proceeding.

20.0 Insurance

20.1 Property Damage Insurance

The City shall insure the streetcars, spares, equipment, platforms and the streetcar maintenance facility under its property damage insurance coverage. In the event a City vehicle is so damaged that the City determines to replace it rather than have it repaired, such replacement vehicle shall be procured by the City at City expense. The City shall be solely responsible for its deductible and the prosecution and handling of all first party claims with its insurer(s). The City shall cause its insurer(s) to waive its rights of subrogation and the City's rights of recovery against the County.

20.2 Risk Management Program

The County maintains a Risk Management Program in accordance with Chapter 4.12 of the King County Code. The City understands, acknowledges and agrees that the County is self-funded for all of its liability exposures. The County agrees to maintain, through its self-funded program or an alternative risk of loss financing program, coverage for all of its liability exposures for the duration of this Agreement. The County agrees to provide the City with at least 30 days prior written notice of any material change in the County's self-funded program or alternative risk of loss financing program. The County agrees that nothing in this Section 20.2 or in the County's Risk Management Program shall limit or modify in any way the County's indemnity obligations under this Agreement.

20.3 Workers' Compensation

The County maintains a Safety and Workers' Compensation Program in accordance with RCW Chapter 51. The City understands, acknowledges and agrees that the County is self-funded for all of its Workers' Compensation liability exposures. The County agrees to maintain, through its self-funded program or an alternative risk of loss financing program, coverage for all of its Workers' Compensation liability exposures for the duration of this Agreement. The County agrees to provide the City with at least 30 days prior written notice of any material change in the County's self-funded program or alternative risk of loss financing program. The cost of including the Seattle Streetcar activities under this Agreement in its self-funded program or alternative risk of loss finance program shall be included in the calculation of the O&M cost and shall be subject to reconciliation adjustment as part of the Annual Review.

Should a County employee bring claim against the City arising out of a work related injury related to the Operation and Maintenance of the Seattle Streetcar, The County agrees to indemnify and defend the City from any claim, demand, and/or cause of action brought by or on behalf of any of the County's employees. The foregoing duty is specifically and expressly intended to constitute a waiver of the County's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the City only, and only to the extent necessary to provide the City with a full and complete indemnity and defense of claims made by the County's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

21.0 Claims Management

21.1 Process

Claims involving injuries to persons and property damage of others and recovery claims for injuries and damage to Seattle Streetcar personnel will be paid and handled, including defense of litigation, by the King County Risk Management Program in accordance with established claims handling practices. Workers' Compensation claims filed by Seattle Streetcar personnel, who are County employees, will be handled by the County's self-insured Workers' Compensation program.

21.2 Notice of Occurrence

Upon the happening of any occurrence or accident reasonably likely to involve participation by the City, written notice shall be given to the City as soon as practicable.

21.3 Assistance and Cooperation

The City shall not be called upon to assume charge of the settlement or defense of any claim made or suit brought or proceeding instituted against the County arising out of the Operations and Maintenance of the Seattle Streetcar but the City shall have the right and shall be given the opportunity, at its own expense, to associate with the County in the defense and control of any claim, suit or proceeding relative to an occurrence where the claim or suit involves or appears reasonable likely to involve the City's payment obligation in Section 20.2, in which event the County and the City shall cooperate in all things in the defense of such claim, suit or proceeding. The City and County further agree to fully cooperate in the enforcement of any right against any person or entity which may be liable

for the injury or damage arising out of the Operations and Maintenance of the Seattle Streetcar and or damage or impairment to any Seattle Streetcar asset.

21.4 Confidentiality

The parties hereby acknowledge that materials and information, in document form and oral, may be generated by the claims management process that, under applicable law, may be kept confidential and privileged ("Confidential Materials"). Such Confidential Materials are presumed to include, but are not necessarily limited to:

- a. statements of potential witnesses;
- b. legal advice, notes, or memoranda of legal counsel;
- c. information assembled and reports prepared by consulting and potentially testifying experts ;
- d. statements, documents, and information regarding preparation, strategy, and tactics for litigation or other dispute resolution process.

The parties intend by this Agreement to protect the privileged and confidential nature of any Confidential Materials. Each party agrees that all oral and/or written Confidential Materials received from one of the other parties shall be held in strictest confidence and shall not be given, shown, made available, communicated or otherwise disclosed in any way to anyone outside of the City and the County without the express consent of the party from whom the Confidential Materials were received, except pursuant to a judicial order to disclose the materials. If either the City or the County receives a request from an outside party for Confidential Materials, the recipient of the request shall immediately notify the other party to this Agreement, who shall be entitled to bring a motion in court to oppose the request. The recipient of the request may also bring a motion to oppose the request, but is not obligated to do so.

22.0 Hazardous Substance

22.1 Indemnification.

City agrees to indemnify, defend and hold County its appointed and elected officials, employees, from and against any and all claims, liabilities, damages, and expenses, including reasonable attorney's fees, asserted against County by a third party, including without limitation, any agency or instrumentality of the federal government, state or local government, for bodily injury, including death of a person, physical damage to or loss of use of property, or clean-up activities (including but not limited to investigation, study, response, remedial action, or removal), fines or penalties arising out of or relating to the presence, release, or threat of release of a Hazardous Substance existing or emanating from the premises, except to the extent caused by the act or omission of County. The obligations under this paragraph shall survive the expiration or other termination of this agreement.

22.2 Definition of Hazardous Substances

"Hazardous Substances" as defined in this agreement shall mean:

- a. Any toxic substances or waste, sewage, petroleum products, radioactive substances, medicinal, bacteriological, or disease-producing substances; or

- b. Any dangerous waste, hazardous waste, or hazardous substance as defined in:
 - i. Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereinafter amended (42 U.S.C. 9601 et seq.);
 - ii. Resource Conservation and Recovery Act, as now or hereinafter amended (42 U.S.C. 6901 et seq.);
 - iii. Hazardous Waste Management Act and Washington Model Toxics Control Act, as now or hereinafter amended (R.C.W. Chs. 70.105, and 70.105D); or
- c. Any other pollutant, contaminants, or substances, posing a danger or threat to public health or welfare, or to the environment, which are regulated or controlled by any federal, state and local laws, and regulation, as now or hereinafter amended.

23.0 Dispute Resolution

The City and the County agree to use their best efforts to resolve any disputes arising under this Agreement using good faith negotiations. The City's Seattle Streetcar Project Manager and the County's Light Rail Manager shall communicate regularly to discuss the status of the tasks and services to be performed and to prevent disputes from arising. Except as otherwise provided in this Agreement, the Parties agree to use the following dispute resolution process.

23.1 Step One

The City's Department of Transportation Major Projects Division Director and the County's Light Rail Manager shall confer and attempt to resolve the dispute within ten (10) business days of written notification by either party.

23.2 Step Two

In the event the City's Department of Transportation Major Projects Division Director and the County's Light Rail Manager are unable to resolve the dispute within ten (10) business days as provided in Step One, either Party may refer the dispute to the City's Director of Transportation and the County's Transit General Manager. They shall confer and attempt to resolve the dispute within ten (10) business days of receiving the referral.

23.3 Prerequisite to Litigation

Neither Party shall have the right to seek relief in a court of law until and unless these first two procedural steps in Section 23.1-23.2 are exhausted.

23.4 Mediation

In the event the Parties are unable to resolve the dispute utilizing the process set forth in Sections 23.1-23.2, the Parties may, by agreement, choose to submit the matter to a non-binding mediator. The Parties shall share equally in the cost of the mediator. Mediation shall not be a prerequisite to litigation.

23.5 Continued Performance

At all times during the course of the conflict or dispute resolution efforts, the Parties agree to continue to perform their respective responsibilities under this Agreement with due diligence.

24.0 Termination

24.1 Default

Either Party may terminate this Agreement in writing if the other Party substantially fails to fulfill any material obligation under this Agreement through no fault of the terminating Party, provided that insofar as practicable, the Party terminating the Agreement will give:

- a. Written notice of intent to terminate no less than 30 days prior to the date of termination stating how the other Party has failed to perform the obligations under this Agreement; and
- b. An opportunity for the other Party to cure the default within a specified time, not to exceed 30 days, from the date of notice of the intent to terminate. The notice of intent to terminate shall state the time period within which cure is permitted and any other appropriate conditions.

If the other Party fails to remedy the default or the breach to the satisfaction of the other Party within the time period established in the notice of termination or any extension thereof, granted by the terminating Party, the Agreement shall be deemed terminated.

24.2 For Convenience.

Either Party may terminate this Agreement, in writing, for its convenience provided that the other Party will be given:

- a. Written notice of intent to terminate no less than 180 days prior to the intended termination date;
- b. Opportunity for consultation with the Party initiating the termination prior to the termination date; and
- c. Provided, however, the County's obligation to perform the work of this Agreement beyond the current appropriation year is conditional upon appropriation by King County of sufficient funds to support said work. Should such an appropriation not be enacted, this Agreement will terminate automatically at the close of the then-current appropriation year. The appropriation year ends on December 31 of each year.

24.3 Activities upon Termination and Expiration

Upon termination of this Agreement by expiration of the term or as provided in this Section, the City and the County agree to work together cooperatively to develop a coordinated plan for terminating the services rendered up until the time of termination, determining reasonable contract close-out costs for termination for convenience or termination by the County for the City's breach and accounting and transfer of equipment provided by the City in the manner the City directs. In the event of termination for a County default or breach,

the City shall compensate the County only for the services satisfactorily rendered to the date of termination at the rates and amounts and in the manner provided in this Agreement, with no payment for contract closeout costs as otherwise provided in this Section.

25.0 General Provisions

25.1 Rights and Remedies

The rights and remedies of the Parties to the Agreement are in addition to any other rights and remedies provided by law, except as otherwise provided in this Agreement.

25.2 No Joint Venture or Partnership

No joint venture or partnership is formed as a result of this Agreement.

25.3 No Third Party Rights

It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties.

25.4 Compliance with Laws

25.4.1 In General

Each Party shall comply, and to the best of its ability shall ensure, that its employees, agents, consultants, contractors and representatives comply with all federal, state, and local law, regulations, and ordinances, including, but not limited to, applicable public works and procurements laws and regulations, bonding, prevailing wage, nondiscrimination, retainage, insurance, and workers compensation requirements.

25.4.2 Licensing and Certification of Employees

Each Party shall comply, and to the best of its ability shall ensure, that its employees, agents, consultants, contractors and representatives comply with all federal, state and local licensing, registration, filing and/or certification standards, all applicable accrediting standards, and any other standards or criteria established by any agency of the State of Washington or of the federal government applicable to the work or services for which it is responsible under this Agreement.

25.5 Venue

Any legal action between the Parties with regard to this Agreement shall be brought in the Superior Court of King County.

25.6 No Employee Relationship

Each Party and its employees, agents, consultants and representatives shall not be deemed or construed to be employees or agents of the other Party. No employee, agent, consultant or representative of either Party shall make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the other Party. Each Party shall be solely responsible for any claims for wages or compensation by its employees, agents,

and representatives, including consultants and shall indemnify and hold the other Party harmless from any such claims.

25.7 Notice

All written notices required in this Agreement shall be either personally delivered, sent by certified mail, return receipt requested, postage prepaid, or sent by facsimile transmission (with confirmation receipt printed). All notices or requests shall be sent to the City and County addressed as follows:

King County: Transit General Manager
King County Metro Transit
201 South Jackson Street, Mailstop KSC-TR-0415
Seattle, Washington 98104-3856
Fax (206) 684-1778

City of Seattle: Director, Seattle Department of Transportation
P.O. Box 34996
Seattle, Washington 98124-4996
Fax (206) 684-5180

25.8 Waiver or Default

Waiver of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default and shall not be construed to be a modification of the terms of this Agreement.

25.9 Force Majeure

If any Party is rendered unable, wholly or in part, by a Force Majeure, to perform or comply with any obligation or condition of this Agreement then, upon giving notice and reasonably full particulars to the other Party, such obligation or condition shall be suspended only for the time and to the extent reasonably necessary to allow for performance and compliance and restore normal operations.

25.10 Assignment/subcontracting

No Party shall assign or subcontract any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment, contract or notation, without prior written consent by the other Party.

25.11 Binding on Successors and Assigns

This Agreement, together with all exhibits and attachments now or hereafter made a part, shall be binding on the Parties hereto and their respective, successors and assigns.

25.12 Severability

If any of the terms and conditions of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and conditions unaffected thereby shall remain in full force and effect. The Parties agree to negotiate in good faith to reform the Agreement to replace any invalid or unenforceable term and/or

condition with a valid and enforceable term and/or condition that comes as close as possible to the intention of the stricken term and/or condition.

25.13 Warranty of Right to Enter Into Agreement

The Parties each warrant they have the authority to enter into this Agreement and that the persons signing this Agreement on behalf of each Party have the authority to bind that Party.

25.14 Exhibits

All exhibits referenced in and attached to this Agreement are incorporated by this reference.

25.15 Amendments and Modifications

This Agreement and its exhibits shall only be amended or modified by mutual agreement of the Parties in writing. Amendments and revisions to Exhibits A, C, D and E can be authorized and executed on behalf of the City by its Director of Transportation and on behalf of the County by its Transit General Manager. Exhibit B may be amended only by actions of both the Seattle City Council and the Metropolitan King County Council.

25.16 Survival of Certain Provisions

The following sections shall survive any termination or expiration of this Agreement:

Section 13.0 Audits, Inspections and reports
 Section 19.0 Indemnification
 Section 20.2 Risk Management Program
 Section 20.3 Workers' Compensation
 Section 22.0 Hazardous Substance
 Section 23.0 Dispute Resolution
 Section 24.0 Termination
 Section 26.0 Effective Date and Term

25.17 Meetings

The parties will meet at least quarterly during 2008 and at least semi-annually thereafter to discuss necessary changes or adjustments to the Agreement's scope of work as new information, circumstances or technology become available. Such discussions will include opportunities to improve the efficiency of the operation and maintenance of the Seattle Streetcar.

26.0 Effective Date and Term

26.1 Effective Date and Term

This Agreement shall take effect upon its signing by both parties and shall expire on December 31, 2014.

26.2 Agreement Review

Eighteen (18) months prior to the end of the term, the City and the County will initiate a review process for consideration of whether the Parties will agree to extend the term of this Agreement for up to five (5) additional years. If the Parties agree to an extension of this Agreement, they shall execute a written extension, along with any amendments, at least

twelve (12) months prior to the expiration of this Agreement, or within such lesser time as may be agreed to by the Parties in writing.

26.3 Expiration

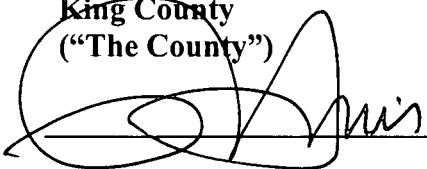
In the event the Parties do not execute an extension to this Agreement, it shall expire at the end of the term as specified in Section 26.1.

27.0 Execution of Agreement

This Agreement may be executed in counterparts, any one of which shall be regarded for all purposes as one original, but both of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth below their signatures.

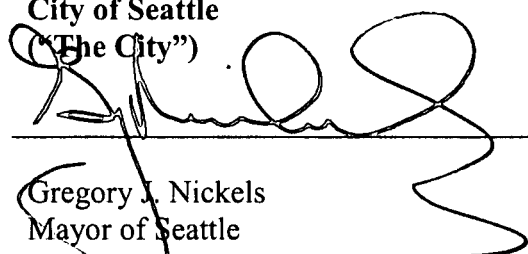
King County
("The County")



Ronald Sims
King County Executive

Date: August 8, 2007


City of Seattle
("The City")



Gregory J. Nickels
Mayor of Seattle

Date: August 20, 2007

Approved as to form:


Deputy Prosecuting Attorney

Date: 7/25/07

Approved as to form:


Assistant City Attorney

Date: 8/15/07

Exhibit A

Definitions

Accident: An unexpected loss-causing event that results in a fatality, bodily injury, or property damage.

Bus Bridge: A substitute bus service operated in place of rail service when all or a portion of a rail transit line is out of service.

Capital Improvements: Placement of new assets into the streetcar system characterized by one-time cost exceeding One Thousand Dollars (\$1,000) and having a life expectancy exceeding one year.

Capital Repairs: Repair intended to extend the life of an existing asset having a one-time cost exceeding One Thousand Dollars (\$1,000) with a life expectancy exceeding one year.

Car History Book: A record maintained by the carbuilder that shows all modifications to the car during its construction, including quality control exceptions and their corrections.

Changeable Message System: A system for providing information to the public by means of electrically illuminated signs which may be easily changed as needed.

Component Repair: Restoration of a component to reliable operative condition.

Configuration Management: The control and documentation of changes that are made to the hardware, software, firmware, and documentation throughout the life of a system.

Emergency: As used in section 16.6, emergency refers to an unexpected disruption of streetcar service due to a defect in the streetcar infrastructure, having a cost of repair exceeding \$5,000.

Emergency Operations: Refers to operations of the streetcar system when a portion of the system is inoperative due to defect, blockage of the track, or other disruption.

Equipment: The streetcar rolling stock. Also, articles used to equip the streetcar facility.

Fixed Physical Plant: Those elements of the streetcar system that are immobile in character; such as track, buildings, overhead wires, station platforms, etc.

Fleet-wide Modifications: Changes to streetcars that affect the entire inventory of cars of a particular type.

Force Majeure: Any delay resulting from any cause beyond a Party's reasonable control resulting in the Party's inability to perform its obligations under this Agreement. The causes may include, but are not limited to, acts of nature, accident, fire, strikes, delays resulting from legal or administrative challenge by parties other than the signatories to this Agreement, etc.

Heavy Repair: Any repair of a car system that requires its removal from the car in order to do the work, or any repair of damage requiring restoration of structural parts.

Incident: A specific event or circumstance that has a negative effect on operations.

Maintenance: Performing work to prevent degraded performance of a system or sub-system.

Maintenance Procedure: A written set of instructions describing the work to be done and the proper sequence of actions to be taken to maintain any component of the streetcar system.

Major Overhaul: A process that restores a worn subsystem or device to nearly new condition.

MMIS: Maintenance Management Information System.

Non-revenue vehicles: Vehicles used in support of transit operations that do not carry passengers for fare.

Operating Phases:

Startup: The period between the effective date of the Seattle Streetcar Operations and Maintenance Agreement and 12:01 AM of the first day of revenue passenger service .

Phase 1: The period between 12:01 AM of the first day of revenue passenger service and 12:01 AM of the first day of the service change following the start of Link Light Rail service .

Phase 2: The period between the end of Phase 1 and 11:59 PM December 31, 2014.

Operations Plan: The County's plans for regular service operations, special services, emergency operations, and the operating procedures for the guidance of the County's staff.

Overhaul Cycle: The interval at which streetcars will be given an overhaul.

Pre-Revenue Service: Operation of streetcars in accordance with the proposed schedule that will be used after the beginning of revenue service, but without passengers. The "Pre-revenue Service" period is used to test the proposed schedule and to train personnel on the procedures to be used under normal and extraordinary conditions.

Seattle Streetcar: This term is used interchangeably with "South Lake Union Streetcar."

Seattle Streetcar Service Plan: The document that outlines the service to be provided by the Streetcar subject to annual review for changes. The plan sets forth hours of operation, headways, special operations, and other details of the service.

Special Event: An event that requires a deviation from the normal operating routine of the Streetcar. These may include extended hours of service for holidays, anticipated delays due to parades or construction work, and the opening of new Streetcar lines.

Startup Quantities: The quantity of spare parts and consumable items specified in contracts for streetcars and facilities as the initial volume of spare part stock provided by the contractor to be delivered before the closure of the contract.

System Safety Program Plan: A document developed by the transit agency describing its safety policies, objectives, responsibilities, and procedures

Support Vehicle: See Non-Revenue Vehicles.

Train-to-Wayside Communications: A system of digital communication between trains (streetcars) and equipment located along the wayside for the purpose of routing trains automatically to their destination and other uses.

Unusual Occurrence Report (UOR): A daily report created by Streetcar management for executive management. The UOR typically includes entries regarding delays to service, incidents, mechanical failures, and other unusual events.

Work: All work required to be provided by the County and its contractors under this Agreement, including all services, labor, equipment and materials, facilities and all other things necessary and proper for, or incidental to, start-up, and operating and maintaining the South Lake Union streetcar.

Exhibit B



Exhibit C

Startup Responsibilities

City of Seattle

1. Approval of Streetcar Operations Plan
2. Cooperation with Metro in development and review of Streetcar Service Plan
3. Arrange for required utility connections and service to Streetcar facilities
4. Contract for any service not assigned to Metro, including capital repairs and replacement beyond normal maintenance of facilities and equipment
5. Test the facilities and equipment, conduct integrated testing, certify and commission systems
6. Select revenue passenger service date
7. Provide all special tools or test equipment needed by County to perform its duties under the Streetcar Agreement
8. Deliver equipment maintenance requirements and drawings to Metro
9. Obtain "Startup Quantity" of spare parts
10. Prepare Car and Station signage
11. Install Passenger Information System changeable signs
12. Marketing of the streetcar opening

King County

1. Develop Streetcar Service Plan, Operations Plan, System Safety Program Plan
2. Incorporate the Seattle Streetcar into Metro's System Security Plan
3. Comply with regulatory requirements
4. Hire and train staff
5. Develop and implement operating and maintenance procedures
6. Operate and maintain the streetcars
7. Consult with City regarding Revenue Passenger Service date
8. Assist with operational testing
9. Conduct emergency preparedness drills
10. Prepare train schedules, operator runs and car assignments
11. Prepare "Bus Bridge" plan
12. Provide Non-Revenue Vehicles
13. Arrange Lost and Found handling
14. Develop media relations procedures
15. Establish procedure to collect and report ridership, NTD, and performance data

Exhibit D

Seattle Streetcar Maintenance Responsibilities

City of Seattle

1. Utility Connections
2. Pavement
3. Traffic signals
4. Traffic signs
5. Streetcar signs
6. Pavement markings
7. Stations
8. Station landscaping
9. Lighting
10. Shelters and furnishings
11. Information posters
12. Poles – joint use
13. Track Drains – all except the portion between the rails
14. Driveway crossings – maintain pavement

King County

1. Wheel Truing
2. TWC on Cars
3. Radio
4. Maintenance Facility
5. Cranes
6. Shop Machines
7. Roll-up Doors
8. Phones and Networks
9. Track
10. Track Drains – between rails
11. Driveway crossings – maintain rails
12. Overhead centenary system
13. Trolley bus crossings
14. Poles – strain poles
15. Span wires
16. Substations
17. 750 VDC Vaults
18. Fencing

Exhibit E

Cost Methodology for payments by City to County

The City shall pay the County consistent with the following cost methodologies for costs incurred in streetcar activities:

Start-up Cost Methodology

Direct costs for staff dedicated to the Seattle Streetcar operation and maintenance activities, including salaries, benefits, overtime and a charge for workers compensation costs.

Direct and indirect costs for training and maintenance support from Metro's Power and Facilities Section for the OCS, substations, maintenance facility and trackway once turned over to the County for maintenance. Costs will include direct staff salaries and benefits, section administration, support vehicles and a charge for workers compensation costs.

Indirect and general administration costs including Transit Division and King County support services allocated based on methodology used for reporting to National Transit Database (NTD) and reflecting costs reported to NTD, and Light Rail Section administrative costs.

Direct materials and supplies, including parts, shop supplies and office equipment and supplies.

One time costs for incorporating Seattle Streetcar parts into the vehicle maintenance inventory system, adjustments to scheduling and customer information software systems, staff hiring and customer information signage.

Purchase of non-revenue vehicle(s) to support service operation.

O&M Cost Methodology

Direct costs for staff dedicated to the Seattle Streetcar operation and maintenance activities, including salaries, benefits, overtime and a charge for workers compensation costs.

Direct and indirect costs for maintenance support from Metro's Power and Facilities Section for the OCS, substations, maintenance facility and trackway. Costs will include direct staff salaries and benefits, section administration, support vehicles and a charge for workers compensation costs.

Indirect and general administration costs including Transit Division and King County support services allocated based on methodology used for reporting to National Transit Database (NTD) and reflecting costs reported to NTD, insurance premiums in proportion to the county's overall ridership, risk and claims costs associated with the streetcar as described in the terms of the agreement, and Light Rail Section administrative costs.

Direct materials and supplies, including parts, shop supplies and office equipment and supplies.

Other service provided by the County outside of the operating scope such as emergency operating and maintenance expenditures, bus bridges, body work, moving streetcars to other locations for major overhauls, etc. These and any other activities negotiated under separate agreements will be charged based on actual cost incurred.

2008 projected O&M costs are approximately \$2,000,000

Fare Calculation Methodology

Cash fares will be based on actual revenue collected through the on-board cash farebox.

Pass fare revenue will be established based on Metro's reimbursement from the regional fare account(s) based on ridership initially obtained via a passenger survey. When available, data from the regional fare coordination system (ORCA) will be used to determine the value of pass fare revenue.

When available for use, fares paid by electronic purse will be treated as if they were cash fares adjusted for any transfer activity.

If sufficient data is not collected electronically, fare revenue from transfers from other Metro services will be determined via a passenger survey conducted at least every 3 years.

Any special fare media used on the Seattle Streetcar will count as Seattle Streetcar revenue equal to the amount paid to Metro when the fare media was issued.

2008 projected fare revenue, based on current fares, is \$300,000.

ATTACHMENT B

Seattle Streetcar

Operations and Maintenance Financial Plan

May 2007

Prepared for:
Seattle City Council

Prepared by:
Seattle Department of Transportation

ATTACHMENT B

Table of Contents

1	Background & Purpose	Page 2
2	Operating Plan & Expenditure Projections	Page 3
3	Sources of Funds	Page 4
4	Interim Financing	Page 7
Table 1	Sources & Uses of Funds/Cash Flow	Page 8
Table 2	Sponsorship Program Revenues	Page 9

ATTACHMENT B

The City of Seattle began construction of a modern streetcar line in July 2006. This South Lake Union line will provide transit service to the South Lake Union, Denny Triangle and Commercial Core neighborhoods and is envisioned as the first line of a potential Seattle Streetcar network. The construction of the line is anticipated to be completed in Fall 2007 with operations and fare-box recovery beginning in December, 2007.

During the planning phase of the South Lake Union line, the City began discussions with King County Metro regarding operation of the streetcar system. The Office of Policy & Management prepared a Capital Financing and Operating and Maintenance Plan (City Clerk File 307392) for consideration by the City Council in April 2005. The Council subsequently adopted Ordinance 121850, which stated the City's intent concerning funding of capital and operating costs and authorized negotiations for an interlocal agreement with King County Metro.

Ordinance 121850 established these parameters for capital and operating cost funding:

The City shall not use General Fund money to pay for either the capital costs or the operations and maintenance costs of a South Lake Union ("SLU") streetcar line except for the following:

- A. Funds from the sale of City surplus property in SLU.
- B. Revenues derived from new revenue sources specifically devised to pay for the SLU streetcar's capital or operations and maintenance costs; and
- C. The potential use of General Funds that may be needed to pay for the City's assessment for its properties within a Local Improvement District ("LID").

ATTACHMENT B

The Financial Plan assumes that the Streetcar will operate seven days per week, 15 hours per day, with 15 minute headways. The City will have the opportunity to adjust the operating plan annually based on past financial and ridership indicators.

The baseline operating plan is estimated to have a direct operations and maintenance cost of approximately \$2 M per year (in 2008 dollars). In addition, the Financial Plan assumes additional City expenditures of \$60,000 per year (in 2008 dollars) for administration and sponsorship program expenses.

The Financial Plan forecasts a flow of expenditures for these operations and maintenance costs, as detailed in **Table 1**.

The Financial Plan forecasts a flow of funds from a variety of sources, as detailed in **Table 1** and described further below in sections 3.1-3.4. In addition, the Financial Plan identifies potential additional sources of funds that meet the criteria of revenues derived specifically to pay for the Streetcar project or its operations, or revenue sources specifically authorized for Streetcar funding in Ordinance 121850. Because these potential sources are still in development, they are not included in the forecast flow of funds but identified as potential additional sources that would reduce interim financing and/or allow for service increases.

3.1 Farebox Revenues

A ridership forecast for the South Lake Union line was prepared for the Streetcar Network Feasibility Study. Initial ridership is forecast to be 330,000 to 380,000 per year based on existing (2004) density along the alignment. Ridership growth is projected to occur with jobs and housing growth in the South Lake Union and Denny Triangle areas to over 1 million riders per year.

3.2 Metro Transit

The Financial Plan assumes that King County Metro Transit will pay 75% of the net operations and maintenance cost of the Streetcar (net of farebox revenues that will be applied to these costs) in Phase 2 of Streetcar operations. Phase 2 would begin with the operation of the initial segment of LINK light rail, at which point existing Metro service hours that are duplicated by light rail service will be available for redeployment.

3.3 FTA Maintenance Funds

The City of Seattle receives an annual share of Federal Transit Administration funds for transit system maintenance and repair allocated within the Puget Sound region, on a formula basis. The

ATTACHMENT B

Financial Plan assumes that a portion of the City's share of these funds (approximately 10% to 15%) would be allocated annually to the Seattle Streetcar through the City's budget process.

3.4 Sponsorship Program Revenues

The City is currently offering opportunities to sponsor the Seattle Streetcar vehicles and the stations along the South Lake Union Line. Pricing has been established and letters of intent have been executed with several sponsors. The Financial Plan incorporates a forecast of the revenues from this sponsorship program, as shown in **Table 2**.

3.5 Additional Sponsorship Program Revenue Opportunities

The Executive is developing additional sponsorship program elements, such as "Ride and Dine" and "Stop and Shop" brochures that would be available on the streetcar vehicles and would feature dining and retail opportunities along the South Lake Union line. Potential revenues from the program are not included in the forecast flow of funds, but represent an additional annual source of funds that may be available to supplement operational funding.

3.6 Special Ticketing Revenue Opportunities

The Executive is also evaluating special ticketing opportunities. Streetcar systems in Portland, Oregon and Tampa, Florida offer "bulk" ticket sales to area business who may wish to offer them to their patrons as a marketing opportunity. These special ticketing opportunities would need to be coordinated with King County Metro fare programs. If special ticketing is implemented, additional revenue from this source may be available to supplement operational funding.

3.7 Transit Advertising Revenue Opportunities

The Executive is evaluating the potential for a transit advertising program to be implemented at transit stop locations within the center city area. Infrastructure to accommodate transit advertising has been incorporated into the stop platforms along the South Lake Union line.

ATTACHMENT B

If the transit advertising program is implemented, additional revenue from this source may be available to supplement operational funding.

3.8 Property Sale Proceeds

Ordinance 121850 allows for proceeds of the sale of South Lake Union properties to be appropriated for capital or operation funding needs. To the extent that other sources close the capital financing gap, the remaining balance of these sale proceeds, and or any incremental proceeds from the sale of surplus property and air rights at the Streetcar maintenance facility site, are potential sources that could be applied to Streetcar operations.

The Financial Plan incorporates a forecast of the interim financing that will be required to meet current year expenditure obligations. Interim financing will be provided through an interfund loan from the City's consolidated cash pool. Ridership and sponsorship program fund sources will grow over time to provide sufficient revenue to repay the interim financing outlays (including interest payments).

With slow-growth projections, total revenue will exceed operating costs in 2010 and the interfund loan will be repaid by 2018.

Table 1 Forecast Sources & Uses of Funds

In Thousands

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Ridership & Fare Projections													
Ridership-Slow Growth	28.5	346.8	438.0	492.8	532.2	574.7	620.7	670.4	724.0	781.9	844.5	912.0	985.0
Ridership-Faster Growth	28.5	547.5	657.0	689.9	724.3	760.6	798.6	838.5	880.4	924.5	970.7	1,019.2	1,070.2
Slow Growth Sources of Funds													
Farebox Recovery-Slow Growth	21.4	281.7	383.3	431.2	505.6	546.0	589.7	636.9	773.8	835.7	902.5	1,083.1	1,169.7
Metro--75% Share of Costs Net of Farebox	-	-	632.5	1,283.5	1,283.9	1,311.8	1,339.3	1,366.2	1,328.1	1,348.4	1,367.4	1,303.6	1,312.7
Slow Growth Farebox & Metro Funds Total	21.4	281.7	1,015.8	1,714.6	1,789.5	1,857.8	1,929.0	2,003.1	2,101.9	2,184.1	2,270.0	2,386.7	2,482.4
Fast Growth Sources of Funds													
Farebox Recovery-Faster Growth	21.4	444.8	574.9	603.6	688.1	722.5	758.7	796.6	941.0	988.0	1,037.4	1,210.3	1,270.8
Metro--75% Share of Costs Net of Farebox	-	-	560.7	1,154.1	1,147.0	1,179.4	1,212.5	1,246.4	1,202.7	1,234.2	1,266.3	1,208.2	1,236.8
Faster Growth Farebox & Metro Funds Total	21.4	444.8	1,135.5	1,757.7	1,835.1	1,901.9	1,971.2	2,043.0	2,143.7	2,222.2	2,303.7	2,418.5	2,507.7
Other Sources of Funds													
FTA 5307/5309 Funds Programmed to Streetcar	-	131.0	136.3	141.7	147.4	153.3	159.4	165.8	172.4	179.3	186.5	194.0	201.7
Sponsorship Revenues	413.8	465.0	477.0	507.5	507.5	659.8	659.8	659.8	659.8	659.8	857.7	857.7	857.7
Other Sources of Funds Total	413.8	596.0	613.3	649.2	654.9	813.0	819.2	825.6	832.2	839.1	1,044.2	1,051.6	1,059.4
Uses of Funds													
Direct Operating Expenses	600.0	2,000.0	2,070.0	2,142.5	2,217.4	2,295.0	2,375.4	2,458.5	2,544.6	2,633.6	2,725.8	2,821.2	2,919.9
Estimated Cost													
Other Annual Expenses	-	50.0	51.8	53.6	55.4	57.4	59.4	61.5	63.6	65.8	68.1	70.5	73.0
City Administration	-	10.0	10.3	10.6	10.9	11.3	11.6	11.9	12.3	12.7	13.0	13.4	13.8
Sponsorship Program Expenses													
Uses of Funds Total	600.0	2,060.0	2,132.1	2,206.6	2,283.8	2,363.7	2,446.3	2,531.9	2,620.5	2,712.1	2,807.0	2,905.2	3,006.8
Cash Flow Forecasts													
Slow Growth Forecast													
Beginning Balance	-	(166.8)	(1,385.1)	(1,969.9)	(1,907.2)	(1,838.0)	(1,615.0)	(1,386.5)	(1,151.6)	(887.8)	(613.3)	(124.1)	416.2
Other Sources	413.8	596.0	613.3	649.2	654.9	813.0	819.2	825.6	832.2	839.1	1,044.2	1,051.6	1,059.4
Payment Due to Metro	(578.6)	(1,718.3)	(1,054.2)	(427.8)	(428.0)	(437.3)	(446.4)	(455.4)	(442.7)	(449.5)	(455.8)	(434.5)	(437.6)
Direct City Costs	-	(60.0)	(62.1)	(64.2)	(66.4)	(68.6)	(71.0)	(73.4)	(75.9)	(78.5)	(81.2)	(84.0)	(86.8)
Interest Expense/(Earnings)	(2.0)	(36.0)	(81.8)	(94.6)	(91.3)	(84.2)	(73.2)	(61.9)	(49.7)	(36.6)	(18.0)	7.1	34.2
Streetcar Fund Ending Balance	(166.8)	(1,385.1)	(1,969.9)	(1,907.2)	(1,838.0)	(1,615.0)	(1,386.5)	(1,151.6)	(887.8)	(613.3)	(124.1)	416.2	985.3
Faster Growth Forecast													
Beginning Balance	-	(166.8)	(1,218.1)	(1,671.8)	(1,550.0)	(1,416.1)	(1,126.9)	(830.6)	(527.0)	(189.1)	159.3	721.7	1,336.9
Other Sources	413.8	596.0	613.3	649.2	654.9	813.0	819.2	825.6	832.2	839.1	1,044.2	1,051.6	1,059.4
Payment Due to Metro	(578.6)	(1,555.2)	(934.5)	(384.7)	(382.3)	(393.1)	(404.2)	(415.5)	(400.9)	(411.4)	(422.1)	(402.7)	(412.3)
Direct City Costs	-	(60.0)	(62.1)	(64.2)	(66.4)	(68.6)	(71.0)	(73.4)	(75.9)	(78.5)	(81.2)	(84.0)	(86.8)
Interest Expense/(Earnings)	(2.0)	(32.1)	(70.5)	(78.6)	(72.3)	(62.0)	(47.7)	(33.1)	(17.5)	(0.7)	21.5	50.2	80.9
Streetcar Fund Ending Balance	(166.8)	(1,218.1)	(1,671.8)	(1,550.0)	(1,416.1)	(1,126.9)	(830.6)	(527.0)	(189.1)	159.3	721.7	1,336.9	1,978.0

Table 2

Sponsorship Program Revenue Forecast

		2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Sponsorship Opportunity	Vehicle 1	60,000	60,000	60,000	60,000	60,000	78,000	78,000	78,000	78,000	78,000	101,400	101,400	101,400
	Vehicle 2	50,000	50,000	50,000	50,000	50,000	65,000	65,000	65,000	65,000	65,000	84,500	84,500	84,500
	Vehicle 3	60,000	60,000	60,000	60,000	60,000	78,000	78,000	78,000	78,000	78,000	101,400	101,400	101,400
	Subtotal Vehicles	170,000	170,000	170,000	170,000	170,000	221,000	221,000	221,000	221,000	221,000	287,300	287,300	287,300
	Olive & Stewart	40,500	40,500	40,500	40,500	40,500	52,650	52,650	52,650	52,650	52,650	68,445	68,445	68,445
	7th & Westlake	27,000	27,000	27,000	27,000	27,000	35,100	35,100	35,100	35,100	35,100	45,630	45,630	45,630
	Westlake & Denny	31,500	31,500	31,500	31,500	31,500	40,950	40,950	40,950	40,950	40,950	53,235	53,235	53,235
	Terry & Thomas	18,000	18,000	18,000	18,000	18,000	23,400	23,400	23,400	23,400	23,400	30,420	30,420	30,420
	Terry & Mercer	-	10,000	10,000	40,500	40,500	52,650	52,650	52,650	52,650	52,650	68,445	68,445	68,445
	Valley Street	31,500	31,500	31,500	31,500	31,500	40,950	40,950	40,950	40,950	40,950	53,235	53,235	53,235
	Fairview & Ward	40,500	40,500	40,500	40,500	40,500	52,650	52,650	52,650	52,650	52,650	68,445	68,445	68,445
	Westlake & Mercer	31,500	31,500	31,500	31,500	31,500	40,950	40,950	40,950	40,950	40,950	53,235	53,235	53,235
	Westlake & Harrison	18,000	18,000	18,000	18,000	18,000	23,400	23,400	23,400	23,400	23,400	30,420	30,420	30,420
	Westlake & Blanchard	5,250	31,500	31,500	31,500	31,500	40,950	40,950	40,950	40,950	40,950	53,235	53,235	53,235
	Westlake & 7th	-	15,000	27,000	27,000	27,000	35,100	35,100	35,100	35,100	35,100	45,630	45,630	45,630
Sub Total Stations		243,750	295,000	307,000	337,500	337,500	438,750	438,750	438,750	438,750	438,750	570,375	570,375	570,375
Total Revenue		413,750	465,000	477,000	507,500	507,500	659,750	659,750	659,750	659,750	659,750	857,675	857,675	857,675

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Department of Transportation	Ethan Melone, 684-8066	Stephen Barham, 733-9084

Legislation Title:

AN ORDINANCE relating to the Seattle Streetcar; addressing the financing of operating, maintenance and capital costs of the Seattle Streetcar and authorizing agreements in connection therewith; authorizing an agreement with King County for operation and maintenance of the Seattle Streetcar; authorizing the creation of a City fund; authorizing the loan of funds from the City's Consolidated (Residual) Cash Pool, or its participating funds, to the new fund; making an appropriation from the new fund; and reducing an appropriation in the 2007 Budget; removing a budget proviso that had restricted spending on streetcar operations.

• **Summary of the Legislation:**

This legislation authorizes actions and expenditures necessary to the operation of the Seattle Streetcar, including execution of an interlocal agreement with King County for operation and maintenance of the Streetcar by the County's Metro Transit Division and negotiation and execution of sponsorship agreements that will provide revenues to support the City's share of operation and maintenance costs. The legislation creates a new fund (the Seattle Streetcar Fund), authorizes an interfund loan from the City's Consolidated (Residual) Cash Pool to the new fund, makes appropriations from the new fund, and reduces an appropriation in the 2007 Adopted Budget.

The new fund, to be administered by the Seattle Department of Transportation (SDOT), will allow the City to manage the South Lake Union line and any future Seattle Streetcar lines as a single line of business, providing clarity for financial management purposes. The interfund loan (up to \$2.2 million of principal and interest outstanding at any one time, to be repaid by December 31, 2018) will allow the City to fund the initial operation of the Streetcar without use of General Fund revenues, using the growing stream of sponsorship revenues to repay principal and interest on the interfund loan.

The legislation also lifts a budget proviso on 2007 appropriations for operation of the Streetcar and approves a financial plan identifying the City's anticipated sources and uses of funds for streetcar operations and maintenance.

- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

In July 2006, the City of Seattle began construction of a modern streetcar line that will provide transit service to the South Lake Union, Denny Triangle and Commercial Core neighborhoods. This South Lake Union streetcar line is envisioned as the first line in a potential Seattle Streetcar network.

During the planning phase of the South Lake Union line, the City began discussions with King County Metro regarding operation of the streetcar system. The Office of Policy & Management prepared a Capital Financing and Operating and Maintenance Plan (City Clerk File 307392) for consideration by the City Council in April 2005. The Council subsequently adopted Ordinance 121850, which stated the City's intent concerning funding of capital and operating costs and authorized negotiations for an interlocal agreement with King County Metro.

- *Please check one of the following:*

☐ **This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*

☒ **This legislation has financial implications.** *(Please complete all relevant sections that follow.)*

Appropriations: *This table should reflect appropriations that are a direct result of this legislation. In the event that the project/ programs associated with this ordinance have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below.*

Fund Name and Number	Department	Budget Control Level*	2007 Appropriation	2008 Anticipated Appropriation
Seattle Streetcar Fund	Seattle Department of Transportation	Streetcar Operations	\$579,000	\$1,778,000
Seattle Streetcar Fund	Seattle Department of Transportation	Debt Service	\$2,000	\$36,000
Transportation Operating Fund [10310]	Seattle Department of Transportation	Mobility-Operations [17003]	(\$815,000)	
TOTAL			(\$234,000)	\$1,814,000

**See budget book to obtain the appropriate Budget Control Level for your department.*

Notes: The 2007 appropriations from the Seattle Streetcar Fund include \$579,000 for payment to King County Metro for streetcar operations (consistent with Table 1 of Attachment B to the accompanying ordinance) and \$2,000 for 2007 interest costs on the interfund loan from the Consolidated (Residual) Cash Pool to the Seattle Streetcar Fund at 4.75%.

The existing 2007 appropriation from the Transportation Operating Fund is reduced by \$815,000, the amount that SDOT was originally budgeted to pay for streetcar operation in 2007. (Note that capital funding for development of the South Lake Union Streetcar Project in the 2007-2012 Adopted Capital Improvement Program will continue to be provided through the Transportation Operating Fund.)

The 2008 anticipated appropriations include \$1,718,000 for payment to King County Metro for streetcar operations plus \$60,000 in direct City costs, and \$36,000 for 2008 interest costs on the interfund loan. Appropriations for 2008 will be made through the 2007/2008 mid-biennium budget process.

Anticipated Revenue/Reimbursement: Resulting From This Legislation: *This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Fund Name and Number	Department	Revenue Source	2007 Revenue	2008 Revenue
Transportation Fund (10310)	SDOT	Sponsorship Agreements	\$414,000	\$465,000
Transportation Fund (10310)	SDOT	Federal	\$0	\$131,000
Transportation Fund (10310)	SDOT	Interfund Loan	\$167,000	\$1,218,000
TOTAL			\$581,000	\$1,814,000

Notes: These revenue sources are described in more detail in Attachment B ("Seattle Streetcar Operations and Maintenance Financial Plan") to the accompanying ordinance.

Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE

Impact: This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Position Title and Department*	Fund Name	Fund Number	Part-Time/Full Time	2007 Positions	2007 FTE	2008 Positions**	2008 FTE**
N/A							
TOTAL							

* List each position separately

** 2008 positions and FTE are total 2008 position changes resulting from this legislation, not incremental changes. Therefore, under 2008, please be sure to include any continuing positions from 2007.

Notes:

- **Do positions sunset in the future?** (If yes, identify sunset date):

Spending/Cash Flow: This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.

* See budget book to obtain the appropriate Budget Control Level for your department.

N/A

Notes:

- **What is the financial cost of not implementing the legislation?** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)

Without this legislation, SDOT will not have the resources to begin operation of the Seattle Streetcar. The benefits that Local Improvement District (LID) ratepayers are anticipating as a result of the LID assessment would be delayed.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)*

No reasonable alternatives consistent with the Council's prior financial policy guidance regarding operation of the South Lake Union streetcar have been identified.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

No.

- **Other Issues** *(including long-term implications of the legislation):*

None.

Please list attachments to the fiscal note below:



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

May 22, 2007

Honorable Nick Licata
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Licata:

I am pleased to transmit the attached proposed Council Bill that authorizes steps necessary to begin operation of the South Lake Union line of the Seattle Streetcar. The legislation authorizes an interlocal agreement with King County for Streetcar operations and maintenance; approves a financial plan that provides for the operations to be accomplished without use of the City's General Fund; authorizes negotiation and execution of sponsorship agreements that will provide a key source of revenue for operations; creates a new City fund for financial management of Seattle Streetcar operations; and authorizes an interfund loan to the new fund, associated with the financial plan. The legislation also makes appropriations from the new fund, reduces an existing appropriation, and removes a budget proviso.

Capital financing for the South Lake Union line was accomplished with an innovative financing plan, including over \$25 million in private funding through a Local Improvement District, that allows the project to be built with no General Fund revenues. The operations agreement and financial plan build on this approach. The agreement provides for King County to fund 75% of net operating costs after the start of LINK Light Rail service. The City will fund operations prior to the start of LINK, and 25% thereafter. The City's share of the operating cost will be funded primarily by revenues generated by vehicle and station sponsorships.

Development that is bringing new jobs and housing to our center city is well underway in South Lake Union and the Denny Triangle. This legislation will allow us to support continued growth by providing transit service to these developing areas. Thank you for your consideration of this legislation. Should you have questions, please contact Ethan Melone of SDOT at 684-8066.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Nickels".

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, Email: mayors.office@seattle.gov

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ORDINANCE _____

AN ORDINANCE relating to the Seattle Streetcar; addressing the financing of operating, maintenance and capital costs of the Seattle Streetcar and authorizing agreements in connection therewith; authorizing an agreement with King County for operation and maintenance of the Seattle Streetcar; authorizing the creation of a City fund; authorizing the loan of funds from the City's Consolidated (Residual) Cash Pool, or its participating funds, to the new fund; making appropriations from the new fund; reducing an appropriation in the 2007 Budget; and removing a budget proviso that had restricted spending on streetcar operations.

WHEREAS, Ordinance 121951 authorized the construction of a modern streetcar line serving downtown Seattle, Denny Triangle and South Lake Union (SLU), and the formation of Local Improvement District (LID) No. 6750; and

WHEREAS, the City Council authorized the Executive to begin negotiation of an operation and maintenance agreement with King County Metro in Ordinance 121850; and

WHEREAS, Ordinance 121850 requires that City funding for operation and maintenance of the streetcar be provided exclusively from funds from the sale of City surplus property in SLU and from revenues derived from new revenue sources specifically devised to pay for the SLU streetcar operation and maintenance costs; and

WHEREAS, the Executive has proposed an interlocal agreement and a finance plan that satisfies the requirements of Ordinance 121850; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Mayor or his designee is authorized to execute an agreement substantially in the form of Attachment A.

Section 2. Attachment B, the Seattle Streetcar Operations and Maintenance Financial Plan (the Financial Plan) proposed by the Executive has been submitted and will be used as the "Baseline Financial Plan" to monitor and track actual expenditures and revenues against those projected in the Financial Plan. The Executive shall provide an annual written report to the City



1 Council pertaining to the Seattle Streetcar's operations and finances for the preceding year,
2 comparing actual experience with the Baseline Financial Plan. The report will be due no later
3 than March 1 of every year. The report shall include projected vs. actual ridership numbers,
4 projected vs. actual revenues and expenditures, actual use of funds from the Consolidated
5 (Residual) Cash Pool for interim financing, the number of Metro service hours used to operate
6 the streetcar, and a narrative explaining any operational or capital issues that have occurred in the
7 previous year or are anticipated.
8

9 Section 3. The Mayor or his designee is authorized to negotiate and execute streetcar
10 vehicle and station sponsorship agreements consistent with the Financial Plan and consistent
11 with Seattle Municipal Code provisions relating to regulation of signage. The sponsorship
12 agreements may provide for the City to grant sponsorship rights for streetcar vehicles and
13 stations, establish the term and payments associated with the sponsorship rights, and establish the
14 forms of sponsor identification such as signage and audible messages that will be provided to
15 sponsors, with the limitation that agreements will not allow for coverage of streetcar vehicle
16 windows.
17
18

19 Section 4. The Director of Finance is hereby authorized to create in the City Treasury the
20 Seattle Streetcar Fund, from which may be paid certain operating, maintenance, and capital costs
21 related to the Seattle Streetcar, including costs for city administration. The Fund shall receive all
22 revenues associated with operating and maintaining the Streetcar, including but not limited to
23 revenues from sponsorship agreements; federal, state, county or other grants or transfers; private
24 funding, donations or gifts; property sales proceeds; and other monies as authorized by
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1 ordinance. The Fund shall receive earnings and pay interest on its positive and negative
2 balances. The Director of Seattle Transportation Department shall have responsibility for
3 administering the Fund.

4 Section 5. A loan of up to Two Million Two Hundred Thousand Dollars (\$2,200,000)
5 principal and interest outstanding at any one time is hereby authorized to be made from the City's
6 Consolidated (Residual) Cash Pool or its participating funds to the Seattle Streetcar Fund. Said
7 loan is to be repaid no later than December 31, 2018 with interest on the loan at the rate of return
8 of the City's Consolidated (Residual) Cash Pool.
9

10 Section 6. The entire principal and interest amount of the loan authorized by Section 5
11 shall be repaid.
12

13 Section 7. The Director of Finance may effectuate the loan authorized in Section 5 above
14 by transferring cash from one or more of the funds participating in the City's Consolidated
15 (Residual) Cash Pool to the Seattle Streetcar Fund, or by carrying the Seattle Streetcar Fund in a
16 negative cash position in an amount not to exceed Two Million Two Hundred Thousand Dollars
17 (\$2,200,000), until no later than December 31, 2018. The Director of Finance is further
18 authorized to establish, and modify if necessary, from time to time, a repayment plan and
19 schedule.
20

21 Section 8. If the Executive intends to propose an annual Streetcar Service Plan to the
22 County as described in Section 6.1 of Exhibit A that includes potential changes in streetcar
23 operations that may result in headways over or under 15 minutes or hours of operation that are
24 over or under 15 hours per day, or that requires a level of City funding that exceeds by 10% that
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26
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28

1 projected in the Baseline Financial Plan for that year, then the Executive must submit the
2 proposed Streetcar Service Plan to the City Council for its review and approval, via Council
3 resolution, prior to submitting the plan to King County for its consideration.

4 Section 9. By October 1, 2007, the Executive shall propose a plan to pay for any
5 remaining capital costs pertaining to the South Lake Union Streetcar using the following revenue
6 sources: federal grants that have been requested for 2007, the proceeds from the sale of excess
7 City property adjacent to the Seattle Streetcar maintenance base; \$2 million from the South Lake
8 Union Proceeds Subaccount established by Ordinance 120411; and \$1.5 million from the
9 Denny/South Lake Union Transportation Mitigation Funds. The order in which these funds are
10 used should be prioritized by availability to minimize the extent to which interim financing is
11 used to pay for streetcar capital costs. Once the streetcar capital costs are paid, the Council may
12 consider using any remaining funds, if appropriate and allowable, to establish a contingency fund
13 to pay for major maintenance for the streetcar and/or pay for the streetcar's Phase I operation
14 costs.
15

16 Section 10. The Executive shall provide written confirmation to the Chair of the
17 transportation committee that sufficient insurance for the Seattle Streetcar has been acquired
18 prior to beginning operations of the Streetcar. The Executive shall maintain sufficient insurance
19 for the duration of the project.
20

21 Section 11. In order to pay for necessary costs and expenses incurred or to be incurred in
22 2007, but for which insufficient appropriations were made, new appropriations are made in the
23 2007 Budget from the fund shown, as follows:
24
25
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Fund	Department	Budget Control Level	Amount
Seattle Streetcar Fund (XXXXX)	Seattle Department of Transportation	Streetcar Operations	\$579,000
Seattle Streetcar Fund (XXXXX)	Seattle Department of Transportation	Debt Service	\$2,000

The purpose of the Streetcar Operations BCL is to operate and maintain the Seattle Streetcar.

The purpose of the Debt Service BCL is to make interest payments on outstanding balances of the interfund loan authorized in Section 5.

Section 12. The appropriation for the following item in the 2007 Budget is reduced from the fund shown, as follows:

Fund	Department	Budget Control Level	Amount
Transportation Operating Fund (10310)	Seattle Department of Transportation	Mobility-Operations (17003)	(\$815,000)

Section 13. The restrictions imposed by the following budget proviso are removed and they are no longer restrictions for any purpose including for Subsection 1(b) of Ordinance 122298:

Department	Green Sheet	Proviso Description	Budget Control Level
Seattle Department of	#99-1-A-1	Prohibits the spending of money appropriated for 2007 for the Seattle	17003

1	Transportation		Department of Transportation's Mobility Operations BCL for operation of the South Lake Union Streetcar until authorized by future ordinance.	
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2
3
4 Section 14. Acts consistent with the authority and prior to the effective date of this
5 ordinance are hereby ratified and confirmed.

6
7 Section 15. This ordinance shall take effect and be in force thirty (30) days from and
8 after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10)
9 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

10 Passed by the City Council the ____ day of _____, 2007, and signed by me in open
11 session in authentication of its passage this ____ day of _____, 2007.

12
13
14
15 _____
President _____ of the City Council

16 Approved by me this ____ day of _____, 2007.

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19 _____
Gregory J. Nickels, Mayor

20 Filed by me this ____ day of _____, 2007.

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23 _____
City Clerk

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25 (Seal)



Attachment A – INTERLOCAL AGREEMENT between King County and City of Seattle for
Seattle Streetcar Operations and Maintenance

Attachment B – Seattle Streetcar Operations and Maintenance Financial Plan (May 2007)



INTERLOCAL AGREEMENT

between

King County and City of Seattle

for

Seattle Streetcar Operations and Maintenance

This AGREEMENT ("Agreement") is entered into this _____ day of _____ 2007, by and between the City of Seattle (hereinafter referred to as "the City") and King County (hereinafter referred to as "the County") and as may be referred to individually as "Party" and collectively as "Parties".

RECITALS

Whereas, pursuant to Chapters 36.56 RCW and 35.58 RCW and public vote, the County is authorized to perform metropolitan public transportation functions; and

Whereas, the City's authority to operate public transportation services is conditioned on the County's approval per RCW 35.58.260; and

Whereas, the County has approved in Ordinance _____ the City's operation of a streetcar from the Fairview Avenue N and Ward Street to Westlake Avenue and Olive Way in the City; and

Whereas the City had experience building a streetcar as owner and builder of the Waterfront Streetcar; and

Whereas, the City and the County's METRO Transit Division entered into a Waterfront Streetcar Operations Agreement on February 22, 1978; and

Whereas, the County's METRO Transit Division assumed ownership of the Waterfront Streetcar from the City on November 1, 1985 pursuant to a transfer agreement between the City of Seattle and Municipality of Metropolitan Seattle (METRO); and

Whereas, the County has experience operating and maintaining streetcars in the City of Seattle and will operate and maintain Sound Transit's light rail system; and

Whereas, the City developed a Capital Finance and Operating and Maintenance Plan for the Seattle Streetcar in April 2005 that anticipates the re-allocation of METRO bus service hours from the LINK Light Rail service area to the Seattle Streetcar and identifies other planned sources of funds to support the City's contribution to Seattle Streetcar operating and maintenance costs; and

ATTACHMENT A



Whereas, King County taxpayers owning property within City of Seattle Local Improvement District 6750 are contributing \$25,700,000 toward the total cost to construct and equip a modern streetcar line serving Downtown Seattle, Denny Triangle and South Lake Union; and

Whereas, the City is procuring, through an agreement with the City of Portland, three streetcar vehicles of the similar design and specification as those operating on the City of Portland's Portland Streetcar and Sound Transit's Tacoma Streetcar lines; and

Whereas the parties believe it is in the best interest of the public to have the County operate and maintain the Seattle Streetcar once the City has constructed the facilities and procured the operating equipment;

NOW, THEREFORE, in consideration of the mutual terms and obligations contained herein, the Parties agree as follows:

1.0 Purpose and Scope of Agreement

1.1 Purpose and Scope

The Agreement, including attached exhibits, specifies the roles and responsibilities regarding the operation and maintenance of the Seattle Streetcar following construction by the City and during Startup and Passenger Service.

1.2 Definitions

Words, terms, and abbreviations used in this Agreement not defined in the body of this Agreement are defined in Exhibit A attached hereto.

2.0 Description

The initial segment of the Seattle Streetcar will consist of 1.3 miles of double track for passenger service, and 0.2 miles of maintenance facility lead track as shown in Exhibit B.

3.0 General

3.1 County Obligations

- a. Assist the City with Startup activities;
- b. Operate the Seattle Streetcar in accordance with Seattle Streetcar Service Plan.
- c. Comply with regulatory requirements affecting the operation of the Seattle Streetcar, including reporting to regulatory agencies (local, state, and federal).
- d. Develop the Seattle Streetcar Service Plan, Operations Plan, System Safety Program Plan.

3.2 City Obligations

- a. Cooperate with the County in the development of the Seattle Streetcar Service Plan.
- b. Review the County's Seattle Streetcar Operations Plan for approval.

ATTACHMENT A

- c. Construct or procure all facilities, systems, equipment and vehicles, except as otherwise provided in the Agreement, in a condition that would allow the County to perform its obligations in a safe and efficient manner.
- d. Arrange for the required utility connections and service to Seattle Streetcar facilities.
- e. Undertake capital improvements and replacements of Seattle Streetcar facilities and equipment as necessary, including vehicles.
- f. Contract for any service not specifically assigned to the County under this Agreement, including capital repairs and replacement beyond normal maintenance of facilities and equipment.
- g. Provide special fare media, if required, for use on the Seattle Streetcar consistent with County requirements.
- h. Be responsible of all operations audits of the Seattle Streetcar.

4.0 Ownership and Use of the Seattle Streetcar

Ownership of the Seattle Streetcar facilities and vehicles will remain with the City. The County will not use, or permit use by third parties of, the Seattle Streetcar facilities for any purpose other than operation and maintenance of the Seattle Streetcar except with approval or upon receiving direction by the City. The City retains the right to enter into sponsorship agreements associated with Seattle Streetcar facilities and vehicles. The County will provide access to the Seattle Streetcar facilities and vehicles for application of signage and graphics associated with such sponsorship.

The City is incorporating sustainable design features into the Seattle Streetcar maintenance facility. The County will provide access to the Seattle Streetcar facilities for evaluation of these design features.

5.0 Startup

The projected start date for revenue passenger service is December 1, 2007. The period preceding the start date for revenue passenger service is the "Startup Period". The Startup Period will be used to construct, and prepare for operation of the Seattle Streetcar. Preparation for operation will include: hiring and training of staff, testing of facilities and equipment, certifying and commissioning of systems, and developing plans and procedures. Responsibility for the work during the Startup Period shall be allocated as set forth in Exhibit C.

The City will select the start date for revenue passenger service in consultation with the County within 30 days of execution of this agreement.

6.0 Service Planning and Scheduling

6.1 Seattle Streetcar Service Plan

ATTACHMENT A

Not later than March 30 of each year, the City will provide the County with a proposed service plan for the coming calendar year that will include headways and hours of operation. The City and County will meet to discuss the plan prior to the County's issuance of the final plan. If the parties cannot agree on the content of the plan, the dispute resolution process described in this Agreement shall be used to resolve any disagreement. The service plan may be amended during the year upon agreement of the parties in writing.

6.2 Scheduling and Staff Assignments

Based upon the annual service plan, the County will prepare train schedules and assignments of personnel and equipment to meet the requirements of the plan.

6.3 Special Events

The City will inform the County of any special events that may affect streetcar service. The County will make every effort to provide personnel and equipment for special events not listed in the annual service plan per the City's request. Special events known when the annual service plan is prepared will appear in that plan. Special events may include non-revenue service operations associated with vehicle sponsorships.

7.0 Operations

7.1 Operations Plan

The County will develop plans for regular service operations, special services, and emergency operations. The County will develop operating procedures for the guidance of its staff. Together, these plans will constitute the Seattle Streetcar Operations Plan (Operations Plan). The Operations Plan will be presented to the City at least three (3) months prior to the anticipated date of the first day of revenue passenger service for the City's review and approval, such approval not to be unreasonably withheld, delayed or conditioned. Any significant revisions to the Operations Plan will require the City's review and approval.

7.2 Unusual Occurrence Report

The County will send a copy of its daily Unusual Occurrence Report covering Seattle Streetcar operations at the end of each day's operation. This report will include any delays to trains exceeding 10 minutes, any accidents resulting in serious injury or serious damage to streetcar equipment. The County will give an immediate report of any accident or incident resulting in notice being given to the media, or which can reasonably be expected to be reported in the public media. This notice to the City should be given as soon as practicable after the County has dispatched its response personnel to deal with the incident.

7.3 Bus Bridge

In case of Streetcar service disruption, the County will arrange for substitute bus service, subject to vehicle availability, in accordance with its existing Standard Operating

ATTACHMENT A

Procedure governing such service. The City shall reimburse the County for the cost of the substitute bus service as provided herein.

8.0 Maintenance

8.1 Overall Services

The County shall undertake its maintenance responsibilities as described in this Section 8.0 in accordance with the manufacturer's recommendations, warranty requirements, industry practices, and information provided by designers or installers of the equipment or systems. The County will implement maintenance procedures for these items.

8.2 Non-Revenue Vehicles and Equipment

The County will provide Non-Revenue Vehicles to be used in support of the Seattle Streetcar operation. The costs of such vehicles will be included as provided for in Exhibit E.

8.3 Tools and Equipment

The City of Seattle will provide all special tools or test equipment that the County will use to perform its duties under this Agreement.

8.4 Documentation

The City will provide the County with copies of all as-built drawings and maintenance manuals for Seattle Streetcar facilities and equipment.

8.5 Configuration Management

The City will be responsible for configuration management. The county may propose changes to Seattle Streetcar capital assets via a change proposal consistent with the System Safety Program Plan. The City will be responsible for the configuration management component of any audit conducted by a regulatory agency having oversight responsibility for the Seattle Streetcar. The County will assist the City in preparation for the audit. The City will provide the County with copies of all Configuration Management documents.

8.6 Facilities and Equipment Maintenance

The responsibilities for maintenance of Seattle Streetcar facilities and equipment are delineated in Exhibit D.

8.7 Vehicle Maintenance

As identified in Exhibit D, the County will be responsible for maintaining the Seattle Streetcar vehicles.

- a. **Heavy Repair and Major Overhaul.** The County shall analyze options for heavy repair and major overhauls of streetcars and present the options to the City for collective agreement concerning scope, cost, and schedule for such work. These are not considered ongoing maintenance and all costs for this work will be

ATTACHMENT A

borne by the City. The City and County will agree on a streetcar vehicle overhaul cycle

- b. **Component Repair.** The County will conduct all component repairs.
- c. **Maintenance of Car History.** The carbuilder will deliver Car History Books to the County.

8.8 Systems and Electrical Maintenance

As identified in Exhibit D, the County will be responsible for all maintenance of Seattle Streetcar electrical facilities and systems. This will include both hardware and software elements of traction power substations, overhead contact system, electrical switchgear, yard and shop power distribution and lighting, fire alarms, and electrical facilities. The City will be responsible for maintenance of traffic signals including train-to-wayside communications (TWC) equipment connected to the traffic signal system controls. TWC equipment on the streetcars will be maintained by the County.

9.0 Customer Service, Information, and Marketing

9.1 Overview

The County will be responsible for providing customer information for the Seattle Streetcar. The County shall compile and print schedules for public dissemination and posting at stations. The Parties agree to coordinate and, at times, work jointly in marketing the Seattle Streetcar service, including special events.

9.2 Fare Media Sales

The County will be responsible for fare media sales.

9.3 Sign Hardware and Changeable Message System

As part of startup, the City will prepare station and vehicle signage. Sizes are to conform to existing County signs for interchangeability. The County agrees to assist the City in locating signs and maps. If the City elects to request County assistance in preparation of the signage, those costs will be reimbursed as provided for in Section 16.3.3.

9.4 Media Relations

Except as otherwise identified in this Agreement, the County shall be responsible for maintaining communications with the media about the Seattle Streetcar. The County shall be solely responsible for maintaining communications with the media about any incidents or accidents involving the Seattle Streetcar. The City shall be responsible for media communication about construction activities prior to the start date of revenue service operations.

10.0 Safety

10.1 System Safety Program Plan

ATTACHMENT A

The County will maintain a System Safety Program Plan (SSPP) in accordance with 49 CFR 659.

10.2 Safety Oversight

The Washington State Department of Transportation (WSDOT) will conduct a triennial audit of the Seattle Streetcar's SSPP. The City and the County will develop corrective action plans to respond to any noted deficiencies. The cost of the audit charged by the state and the County's cost in facilitating the audit and creating the corrective plan shall be paid by the City.

10.3 System Security Plan

Metro will include the Seattle Streetcar in its System Security Plan, All-Hazards Response Plans and associated training and exercise programs.

11.0 Code of Conduct

The County will apply and enforce its code of conduct on the Seattle Streetcar and Seattle Streetcar stations pursuant to Ch. 28.96 KCC and its implementing administrative policies and procedures.

12.0 Administration

12.1 Personnel

The County will be solely responsible for managing its Streetcar personnel. The County will apply its policies and procedures regarding recruitment, discipline, appearance, drug use and drug testing.

12.2 Benefits and Records

The County will handle all payroll, benefits and employee records for its personnel operating and maintaining the Seattle Streetcar.

13.0 Audits, Inspections, and Reports

13.1 Audits

The City, the State Auditor, federal auditors, and their representatives may audit the County's records relative to the operation and maintenance of the Seattle Streetcar.

13.2 Record retention

Records pertaining to operation and maintenance costs of the Seattle Streetcar shall be retained by the Parties as specified by their respective record retention schedules.

14.0 Performance Requirements and Reporting

14.1 Ridership Reporting

Ridership, National Transit Database, and performance data will be compiled and

ATTACHMENT A

reported using a methodology established prior to the first day of service.

15.0 Material and Warranty Management

15.1 Warranty Administration

The County will process warranty claims for Seattle Streetcar vehicles, systems, and equipment through its existing warranty claims process, to the full extent of warranty coverage. Warranty claims will be submitted directly to the responsible manufacturer or vendor. In the event that a vendor or manufacturer contests a warranty claim made by the County, the County will immediately notify the City of the dispute, and will provide all information about the claim to the City.

15.2 Material Management

During Startup, the City will purchase the manufacturers' recommended Start-Up Quantities of spare parts. The County will thereafter maintain inventory levels and other supplies and consumables to maintain Seattle Streetcar vehicles and equipment.

16.0 Compensation

16.1 Start-up and Operating Phases

This section defines how the City will compensate the County for its work associated with Seattle Streetcar start-up and operation. Compensation will vary during the three phases of operation; Start-up, Phase 1, and Phase 2.

16.2 Start up Costs

The City will compensate the County for agreed-upon costs during the Start-Up Period as shown in Exhibit E and as amended upon mutual agreement of the parties in writing.

16.3 Operating and Maintenance Cost

Operating and Maintenance Cost (O&M Cost) refers to the annual cost of the County's work to provide the scheduled level of service identified in the Seattle Streetcar Service Plan and in this Agreement beginning on the first day of revenue passenger operations. O&M Cost will be estimated annually for the coming calendar year, with costs for the following year identified no later than October 31 based on the agreed upon service plan for that year. O&M Cost will include direct and indirect costs of staff involved in carrying out the work described in this agreement and the overhead support for that staff. In addition, materials and supplies associated with maintaining and operating the system will be included in O&M Cost. The methodology for calculating O&M costs is included in Exhibit E. Payment of the O&M costs shall be as follows:

- 16.3.1** Phase 1. The City will pay the County 100% of the estimated O&M costs remaining after fare revenue has been subtracted from costs as identified in Exhibit E.

ATTACHMENT A

- 16.3.2** Phase 2. The City will pay the County 25% of the estimated O&M costs remaining after the fare revenue has been subtracted from costs, as identified in Exhibit E..
- 16.3.3** Other mutually agreed upon adjustments related to the Streetcar shall be reimbursed by the City to the County based on costs agreed upon in advance of the expenditure as provided in Sections 16.5 or 16.6 herein.
- 16.3.4** As described in section 26.2. The Parties intend to amend the operating agreement prior to December 31, 2014 to address operations beyond phase 2.

16.4 Fares

Fares will be consistent with County fare policies; provided that the County, as a policy, may decide that transfers will not be issued to riders paying cash or the equivalent electronic media. Fares collected for the streetcar will be calculated as described in Exhibit E.

16.5 Adjustment of Costs due to Changes in Service Plan

Any change in compensation due to changes in the Service Plan during the year will be calculated and included in the monthly invoice for the month in which they occurred.

16.6 Other Operating and Maintenance Cost Adjustments

The Parties acknowledge that there may be unforeseen, non-recurring costs such as emergencies or other material costs arising from circumstances beyond the County's control. In an emergency, the County will notify the City of an upcoming expenditure as provided for in Exhibit E. The City Director of Transportation may give verbal approval of emergency expenditures, provided that, within two working days, the County will provide the City with a written description of the work, a proposed schedule for completion, and an estimated cost. In non-emergency cases, the County will provide the City with the written documentation described above.

16.7 Invoices and Payment

The County shall submit a completed monthly invoice with the required reports to the City not later than the 25th of the month for services provided during the previous month. Prior to the beginning of revenue passenger service, the invoice will include actual costs of staffing and other agreed-upon costs.

During Start-up, the amount invoiced should include actual costs for the previous month.

During Phase 1, the amount invoiced should include one-twelfth of the O&M Cost and any cost adjustments that the City has agreed to pay for the current year minus monthly fare revenue.

ATTACHMENT A

During Phase 2, the amount invoiced should include one-twelfth of 25% of the difference of the O&M Cost minus monthly fare revenue, and any cost adjustments that the City has agreed to pay for the current year.

The invoice must be complete in order for it to be processed by the City. The City will notify the County within ten (10) working days if the invoice is defective. The City will pay the County within thirty (30) days of receipt of a completed invoice. The invoice will be submitted to:

Seattle Department of Transportation
Attention: Seattle Department of Transportation Major Projects Division Director
PO Box 34996
Seattle, WA 98124-4996

16.8 Annual Reconciliation

By May 1, or as soon as possible following that date, actual costs from the County's audited financial statement and fares for the previous year will be determined. The difference between the City's portion of the actual operating and maintenance costs for the previous year and the sum of the invoices for that year will be credited or billed to the City so that the City's total payment for the previous year is equal to their actual costs minus fares.

16.9 System Expansion and Improvement

The City will retain responsibility for necessary improvements or modifications of vehicles, equipment or facilities required to support service levels agreed to in the Seattle Streetcar Service Plan, including track extensions or modifications, additional stations, increased substation capacity, traffic signal modifications and increased car fleet.

17.0 Federal Funding Requirements

In the event the City plans to utilize federal financial assistance to pay for any County work under this Agreement, it shall notify the County at least 120 days in advance, and meet with the County to determine costs and other impacts of such utilization. When federal funds are utilized, the County and City will meet to determine how the County will comply with any applicable federal contract and funding requirements.

18.0 Designated Representatives

The Parties shall designate representatives responsible for communication and coordination between the Parties. The representatives are responsible for coordinating the work of other staff members on the Seattle Streetcar project, the periodic reporting and review of documents required under this Agreement, preparation for the revision of this Agreement and its attachments, and for identifying and resolving issues.

19.0 Indemnification

ATTACHMENT A

19.1 Indemnity for Design

The City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from the design of the Seattle Streetcar project caused by the City its officers, employees, agents, consultants and/or sub consultants of all tiers, acts or omissions. The City agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The City agrees to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of claims made by the City's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.2 Indemnity for Construction

The City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from the construction of the Seattle Streetcar project caused by the City its officers, employees agents, vendors, suppliers, contractors and/or subcontractors of all tiers, acts or omissions. The City agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The City agrees to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of claims made by the City's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.3 Indemnity for Manufacturer's Liability

The City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from the design, construction, manufacturer or modification of the streetcar trolleys provided for the Seattle Streetcar project caused by the City its officers, employees agents, vendors, suppliers and/or subcontractors of all tiers, acts or omissions. The City agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The City agrees to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of the City's

ATTACHMENT A

employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of claims made by the City's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.4 Indemnity for City of Seattle Maintenance Responsibilities

The City shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from its Streetcar Maintenance Responsibilities as outlined in Exhibit D, now or as hereinafter amended, caused by the City its officers, employees agents, vendors, suppliers and/or subcontractors of all tiers, acts or omissions. The City agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The City agrees to indemnify and defend the County from any claim, demand, and/or cause of action brought by or on behalf of any of the City's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the County only, and only to the extent necessary to provide the County with a full and complete indemnity and defense of claims made by the City's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.5 Indemnity for King County Maintenance Responsibilities

The County shall protect, defend, indemnify and save harmless the City, its officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments or costs of any kind whatsoever, (hereinafter "claims"), arising out of or in any way resulting from its Streetcar Maintenance Responsibilities as outlined in Exhibit D, now or as hereinafter amended, caused by the County its officers, employees agents, vendors, suppliers and/or subcontractors of all tiers, acts or omissions. The County agrees that it is fully responsible for the acts and omissions of its subcontractors, acting within the scope of their employment as such, as it is for the acts and omissions of its own employees and agents. The County agrees to indemnify and defend the City from any claim, demand, and/or cause of action brought by or on behalf of any of the County's employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the County's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the City only, and only to the extent necessary to provide the City with a full and complete indemnity and defense of claims made by the County's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

19.6 General Indemnity

Each party shall indemnify the other party from any and all loss that arises out of, is

ATTACHMENT A

connected with, or is due to the performance or non-performance of the indemnifying party's obligations set forth in this agreement.

19.7 Indemnity for Ordinance or Regulation

In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulation, policies or procedures. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy same, including all chargeable costs and attorney's fees.

19.8 Release and Waiver

Except as provided for in Section 19.1 through 19.6 above, each party releases, waives and forever discharges any and all causes of action against the other arising out of the Operation and Maintenance of the Seattle Streetcar.

19.9 Attorney Fees

In the event either party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section against the other party, all such fees, costs and expenses shall be recoverable by the prevailing party.

19.10 Allocation of Liability

The County and City agree that the administration, handling, defense and disposition of all Design, Construction and/or Manufacturers Liability claims arising out of the Seattle Street Car will be the responsibility of the City of Seattle as defined in Section 19 above. Upon the receipt of claims involving allegations of Design, Construction and/or Manufacturers Liability the City shall accept tender of that portion of said claims attributable to the allegations of Design, Construction and/or Manufacturers Liability. The County and the City agree to associate in the defense and control of any claim, suit or proceeding relative to an occurrence where the claim or suit involves or appears to involve allegations of Design, Construction and/or Manufacturers Liability and allegations arising out of the Operations and Maintenance of the Seattle Street Car in which event the County and the City shall cooperate in all things in the defense of such claim, suit or proceeding.

20.0 Insurance

20.1 Property Damage Insurance

The City shall insure the streetcars, spares, equipment, platforms and the streetcar maintenance facility under its property damage insurance coverage. In the event a City vehicle is so damaged that the City determines to replace it rather than have it repaired; such replacement vehicle shall be procured by the City at City expense. The City shall be

ATTACHMENT A

solely responsible for its deductible and the prosecution and handling of all first party claims with its insurer(s). The City shall cause its insurer(s) to waive its rights of subrogation and the City's rights of recovery against the County.

20.2 Risk Management Program

The County maintains a Risk Management Program in accordance with Chapter 4.12 of the King County Code. The City understands, acknowledges and agrees that the County is self-funded for all of its liability exposures. The County agrees to maintain, through its self-funded program or an alternative risk of loss financing program, coverage for all of its liability exposures for the duration of this Agreement. The County agrees to provide the City with at least 30 days prior written notice of any material change in the County's self-funded program or alternative risk of loss financing program. The County agrees that nothing in this Section 20.2 or in the County's Risk Management Program shall limit or modify in any way the County's indemnity obligations under this Agreement.

20.3 Workers' Compensation

The County maintains a Safety and Workers' Compensation Program in accordance with RCW Chapter 51. The City understands, acknowledges and agrees that the County is self-funded for all of its Workers' Compensation liability exposures. The County agrees to maintain, through its self-funded program or an alternative risk of loss financing program, coverage for all of its Workers' Compensation liability exposures for the duration of this Agreement. The County agrees to provide the City with at least 30 days prior written notice of any material change in the County's self-funded program or alternative risk of loss financing program. The cost of including the Seattle Streetcar activities under this Agreement in its self-funded program or alternative risk of loss finance program shall be included in the calculation of the O&M cost and shall be subject to reconciliation adjustment as part of the Annual Review.

Should a County employee bring claim against the City arising out of a work related injury related to the Operation and Maintenance of the Seattle Streetcar, The County agrees to indemnify and defend the City from any claim, demand, and/or cause of action brought by or on behalf of any of the County's employees. The foregoing duty is specifically and expressly intended to constitute a waiver of the County's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the City only, and only to the extent necessary to provide the City with a full and complete indemnity and defense of claims made by the County's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

21.0 Claims Management

21.1 Process

Claims involving injuries to persons and property damage of others and recovery claims for injuries and damage to Seattle Streetcar personnel will be paid and handled, including defense of litigation, by the King County Risk Management Program in accordance with

ATTACHMENT A

established claims handling practices. Workers' Compensation claims filed by Seattle Streetcar personnel, who are County employees, will be handled by the County's self-insured Workers' Compensation program.

21.2 Notice of Occurrence

Upon the happening of any occurrence or accident reasonably likely to involve participation by the City, written notice shall be given to the City as soon as practicable.

21.3 Assistance and Cooperation

The City shall not be called upon to assume charge of the settlement or defense of any claim made or suit brought or proceeding instituted against the County arising out of the Operations and Maintenance of the Seattle Streetcar but the City shall have the right and shall be given the opportunity, at its own expense, to associate with the County in the defense and control of any claim, suit or proceeding relative to an occurrence where the claim or suit involves or appears reasonable likely to involve the City's payment obligation in Section 20.2, in which event the County and the City shall cooperate in all things in the defense of such claim, suit or proceeding. The City and County further agree to fully cooperate in the enforcement of any right against any person or entity which may be liable for the injury or damage arising out of the Operations and Maintenance of the Seattle Streetcar and or damage or impairment to any Seattle Streetcar asset.

21.4 Confidentiality

The parties hereby acknowledge that materials and information, in document form and oral, may be generated by the claims management process that, under applicable law, may be kept confidential and privileged ("Confidential Materials"). Such Confidential Materials are presumed to include, but are not necessarily limited to:

- a. statements of potential witnesses;
- b. legal advice, notes, or memoranda of legal counsel;
- c. information assembled and reports prepared by consulting and potentially testifying experts ;
- d. statements, documents, and information regarding preparation, strategy, and tactics for litigation or other dispute resolution process.

The parties intend by this Agreement to protect the privileged and confidential nature of any Confidential Materials. Each party agrees that all oral and/or written Confidential Materials received from one of the other parties shall be held in strictest confidence and shall not be given, shown, made available, communicated or otherwise disclosed in any way to anyone outside of the City and the County without the express consent of the party from whom the Confidential Materials were received, except pursuant to a judicial order to disclose the materials. If either the City or the County receives a request from an outside party for Confidential Materials, the recipient of the request shall immediately notify the other party to this Agreement, who shall be entitled to bring a motion in court to oppose the request. The recipient of the request may also bring a motion to oppose the request, but is not obligated to do so.

ATTACHMENT A

22.0 Hazardous Substance

22.1 Indemnification.

City agrees to indemnify, defend and hold County its appointed and elected officials, employees, from and against any and all claims, liabilities, damages, and expenses, including reasonable attorney's fees, asserted against County by a third party, including without limitation, any agency or instrumentality of the federal government, state or local government, for bodily injury, including death of a person, physical damage to or loss of use of property, or clean-up activities (including but not limited to investigation, study, response, remedial action, or removal), fines or penalties arising out of or relating to the presence, release, or threat of release of a Hazardous Substance existing or emanating from the premises, except to the extent caused by the act or omission of County. The obligations under this paragraph shall survive the expiration or other termination of this agreement.

22.2 Definition of Hazardous Substances

"Hazardous Substances" as defined in this agreement shall mean:

- a. Any toxic substances or waste, sewage, petroleum products, radioactive substances, medicinal, bacteriological, or disease-producing substances; or
- b. Any dangerous waste, hazardous waste, or hazardous substance as defined in:
 - i. Comprehensive Environmental Response, Compensation and Liability Act of 1980, as now or hereinafter amended (42 U.S.C. 9601 et seq.);
 - ii. Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. 6901 et seq.);
 - iii. Hazardous Waste Management Act and Washington Model Toxics Control Act, as now or hereinafter amended (R.C.W. Chs. 70.105, and 70.105D); or
- c. Any other pollutant, contaminants, or substances, posing a danger or threat to public health or welfare, or to the environment, which are regulated or controlled by any federal, state and local laws, and regulation, as now or hereafter amended.

23.0 Dispute Resolution

The City and the County agree to use their best efforts to resolve any disputes arising under this Agreement using good faith negotiations. The City's Seattle Streetcar Project Manager and the County's Light Rail Manager shall communicate regularly to discuss the status of the tasks and services to be performed and to prevent disputes from arising. Except as otherwise provided in this Agreement, the Parties agree to use the following dispute escalation process.

ATTACHMENT A

23.1 Step One

The City's Department of Transportation Major Projects Division Director and the County's Light Rail Manager shall confer and attempt to resolve the dispute within ten (10) business days of written notification by either party.

23.2 Step Two

In the event the City's Department of Transportation Major Projects Division Director and the County's Light Rail Manager are unable to resolve the dispute within ten (10) business days as provided in Step One, either Party may refer the dispute to the City's Director of Transportation and the County's Transit General Manager. They shall confer and attempt to resolve the dispute within ten (10) business days of receiving the referral.

23.3 Mediation

In the event the Parties are unable to resolve the dispute utilizing the process set forth in Sections 23.1-23.2, the Parties may, by agreement, choose to submit the matter to a non-binding mediator. The Parties shall share equally in the cost of the mediator.

23.4 Prerequisite to Litigation

Neither Party shall have the right to seek relief in a court of law until and unless these procedural steps in Section 23.1-23.2 are exhausted.

23.5 Continued Performance

At all times during the course of the conflict or dispute resolution efforts, the Parties agree to continue to perform their respective responsibilities under this Agreement with due diligence.

24.0 Termination

24.1 Default

Either Party may terminate this Agreement, in whole, or in part, in writing if the other Party substantially fails to fulfill a material obligation or all of its obligations under this Agreement through no fault of the other Party, provided that insofar as practicable, the Party terminating the Agreement will give:

- a. Written notice of intent to terminate at least 30 days prior to the date of termination stating the manner in which the other Party has failed to perform the obligations under this Agreement; and
- b. An opportunity for the other Party to cure the default within at least 30 days of notice of the intent to terminate. In such case, the notice of termination will state the time period in which cure is permitted and any other appropriate conditions.

If the other Party fails to remedy the default or the breach to the satisfaction of the other Party within the time period established in the notice of termination or any extension

ATTACHMENT A

thereof, granted by the Party not at fault, the Agreement shall be deemed terminated.

24.2 For Convenience.

Either Party may terminate this Agreement, in whole or in part, in writing, for its convenience provided that the other Party will be given:

- a. Written notice of intent to terminate no less than 180 days prior to the intended termination date;
- b. Opportunity for consultation with the Party initiating the termination prior to the termination date; and
- c. Provided, however, the County's ability to perform the work of this Agreement beyond the current appropriation year is conditional upon appropriation by the King County Council of sufficient funds to support said work. Should such an appropriation not be approved, this Agreement will terminate automatically at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

24.3 Activities upon Termination and Expiration

Upon termination of this Agreement by expiration of the term or as provided in this Section, the City and the County agree to work together cooperatively to develop a coordinated plan for terminating the services rendered up until the time of termination, determining reasonable contract close-out costs for termination for convenience or termination by the County for the City's breach and accounting and transfer of equipment provided by the City in the manner the City directs. In the event of termination for a County default or breach, the City shall compensate the County only for the services satisfactorily rendered to the date of termination at the rates and amounts and in the manner provided in this Agreement, with no payment for contract closeout costs as otherwise provided in this Section.

25.0 General Provisions

25.1 Rights and Remedies

The rights and remedies of the Parties to the Agreement are in addition to any other rights and remedies provided by law, except as otherwise provided in this Agreement.

25.2 No Joint Venture or Partnership

No joint venture or partnership is formed as a result of this Agreement.

25.3 No Third Party Rights

It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties.

ATTACHMENT A

25.4 Compliance with Laws

25.4.1 In General

Each Party shall comply, and to the best of its ability shall ensure, that its employees, agents, consultants, contractors and representatives comply with all federal, state, and local law, regulations, and ordinances, including, but not limited to, applicable public works and procurements laws and regulations, bonding, prevailing wage, nondiscrimination, retainage, insurance, and workers compensation requirements.

25.4.2 Licensing and Certification of Employees

Each Party shall comply, and to the best of its ability shall ensure, that its employees, agents, consultants, contractors and representatives comply with all federal, state and local licensing, registration, filing and/or certification standards, all applicable accrediting standards, and any other standards or criteria established by any agency of the State of Washington or of the federal government applicable to the work or services for which it is responsible under this Agreement.

25.5 Venue

Any legal action between the Parties with regard to this Agreement shall be brought in the Superior Court of King County.

25.6 No Employee Relationship

Each Party and its employees, agents, consultants and representatives shall not be deemed or construed to be employees or agents of the other Party. No employee, agent, consultant or representative of the County shall make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the other Party. Each Party shall be solely responsible for any claims for wages or compensation by its employees, agents, and representatives, including consultants and shall indemnify and hold the other Party harmless from any such claims.

25.7 Notice

All written notices required in this Agreement shall be either personally delivered, sent by certified mail, return receipt requested, postage prepaid, or sent by facsimile transmission (with confirmation receipt printed). All notices or requests shall be sent to the City and County addressed as follows:

King County: Transit General Manager
 King County Metro Transit
 201 South Jackson Street, Mailstop KSC-TR-0415
 Seattle, Washington 98104-3856

City of Seattle: Director, Seattle Department of Transportation
 P.O. Box 34996
 Seattle, Washington 98124-4996

ATTACHMENT A

25.8 Waiver or Default

Waiver of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default and shall not be construed to be a modification of the terms of this Agreement.

25.9 Force Majeure

If any Party is rendered unable, wholly or in part, by a Force Majeure, to perform or comply with any obligation or condition of this Agreement then, upon giving notice and reasonably full particulars to the other Party, such obligation or condition shall be suspended only for the time and to the extent reasonably necessary to allow for performance and compliance and restore normal operations.

25.10 Assignment/subcontracting

No Party shall assign or subcontract any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment, contract or notation, without prior written consent by the other Party.

25.11 Binding on Successors and Assigns

This Agreement, together with all exhibits and attachments now or hereafter made a part, shall be binding on the Parties hereto and their respective heirs, executors, administrators, successors and assigns.

25.12 Severability

If any of the terms and conditions of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and conditions unaffected thereby shall remain in full force and effect. The Parties agree to negotiate in good faith to reform the Agreement to replace any invalid or unenforceable term and/or condition with a valid and enforceable term and/or condition that comes as close as possible to the intention of the stricken term and/or condition.

25.13 Warranty of Right to Enter Into Agreement

The Parties each warrant they have the authority to enter into this Agreement and that the persons signing this Agreement on behalf of each Party have the authority to bind that Party.

25.14 Exhibits

All exhibits referenced in and attached to this Agreement are incorporated by this reference.

25.15 Amendments and Modifications

This Agreement and its exhibits shall only be amended or modified by mutual agreement of the Parties in writing. Amendments and revisions to the exhibits can be authorized and executed on behalf of the City by its Director of Transportation and on behalf of the County by its Transit General Manager.

ATTACHMENT A

25.16 Survival of Certain Provisions

The following sections shall survive any termination or expiration of this Agreement:

Section 13.0 Audits, Inspections and reports
Section 19.0 Indemnification
Section 20.2 Risk Management Program
Section 20.3 Workers' Compensation
Section 22.0 Hazardous Substance
Section 23.0 Dispute Resolution
Section 24.0 Termination
Section 26.0 Effective Date and Term

25.17 Meetings

The parties will meet at least quarterly during 2008 and semi-annually thereafter to discuss necessary changes or adjustments to the Agreement's scope of work as new information, circumstances or technology become available. Such discussions will include opportunities to improve the efficiency of the operation and maintenance of the Seattle Streetcar.

26.0 Effective Date and Term

26.1 Effective Date and Term

This Agreement shall take effect upon its signing by both parties and shall expire on December 31, 2014.

26.2 Agreement Review

Eighteen (18) months prior to the end of the term, the City and the County will initiate a review process for consideration of whether the Parties will agree to extend the term of this Agreement for up to five (5) additional years. If the Parties agree to an extension of this Agreement, they shall execute a written extension, along with any amendments, at least twelve (12) months prior to the expiration of this Agreement, or within such lesser time as may be agreed to by the Parties in writing.

26.3 Expiration

In the event the Parties do not execute an extension to this Agreement, it shall expire at the end of the term as specified in Section 26.1.

27.0 Execution of Agreement

This Agreement may be executed in counterparts, any one of which shall be regarded for all purposes as one original, but both of which together shall constitute one and the same instrument.

ATTACHMENT A

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth below their signatures.

King County
("The County")

City of Seattle
("The City")

Ronald Sims
King County Executive

Gregory J. Nickels
Mayor of Seattle

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Deputy Prosecuting Attorney

Assistant City Attorney

Date: _____

Date: _____

ATTACHMENT A

Exhibit A

Definitions

Accident: An unexpected loss-causing event that results in a fatality, bodily injury, or property damage.

Bus Bridge: A substitute bus service operated in place of rail service when all or a portion of a rail transit line is out of service.

Capital Improvements: Placement of new assets into the streetcar system characterized by one-time cost exceeding One Thousand Dollars (\$1,000) and having a life expectancy exceeding one year.

Capital Repairs: Repair intended to extend the life of an existing asset having a one-time cost exceeding One Thousand Dollars (\$1,000) with a life expectancy exceeding one year.

Car History Book: A record maintained by the carbuilder that shows all modifications to the car during its construction, including quality control exceptions and their corrections.

Changeable Message System: A system for providing information to the public by means of electrically illuminated signs which may be easily changed as needed.

Component Repair: Restoration of a component to reliable operative condition.

Configuration Management: The control and documentation of changes that are made to the hardware, software, firmware, and documentation throughout the life of a system.

Emergency: As used in section 16.6, emergency refers to an unexpected disruption of streetcar service due to a defect in the streetcar infrastructure, having a cost of repair exceeding \$5,000.

Emergency Operations: Refers to operations of the streetcar system when a portion of the system is inoperative due to defect, blockage of the track, or other disruption.

Equipment: The streetcar rolling stock. Also, articles used to equip the streetcar facility.

Fixed Physical Plant: Those elements of the streetcar system that are immobile in character; such as track, buildings, overhead wires, station platforms, etc.

Fleet-wide Modifications: Changes to streetcars that affect the entire inventory of cars of a particular type.

Force Majeure: Any delay resulting from any cause beyond a Party's reasonable control resulting in the Party's inability to perform its obligations under this Agreement. The causes may include, but are not limited to, acts of nature, accident, fire, strikes, delays resulting from legal or administrative challenge by parties other than the signatories to this Agreement, etc.

ATTACHMENT A

Heavy Repair: Any repair of a car system that requires its removal from the car in order to do the work, or any repair of damage requiring restoration of structural parts.

Incident: A specific event or circumstance that has a negative effect on operations.

Maintenance: Performing work to prevent degraded performance of a system or sub-system.

Maintenance Procedure: A written set of instructions describing the work to be done and the proper sequence of actions to be taken to maintain any component of the streetcar system.

Major Overhaul: A process that restores a worn subsystem or device to nearly new condition.

MMIS: Maintenance Management Information System.

Non-revenue vehicles: Vehicles used in support of transit operations that do not carry passengers for fare.

Operating Phases:

Startup: The period between the effective date of the Seattle Streetcar Operations and Maintenance Agreement and 12:01 AM of the first day of revenue passenger service.

Phase 1: The period between 12:01 AM of the first day of revenue passenger service and 12:01 AM of the first day of the service change following the start of Link Light Rail service.

Phase 2: The period between the end of Phase 1 and 11:59 PM December 31, 2014.

Operations Plan: The County's plans for regular service operations, special services, emergency operations, and the operating procedures for the guidance of the County's staff.

Overhaul Cycle: The interval at which streetcars will be given an overhaul.

Pre-Revenue Service: Operation of streetcars in accordance with the proposed schedule that will be used after the beginning of revenue service, but without passengers. The "Pre-revenue Service" period is used to test the proposed schedule and to train personnel on the procedures to be used under normal and extraordinary conditions.

Seattle Streetcar: This term is used interchangeably with "South Lake Union Streetcar."

Seattle Streetcar Service Plan: The document that outlines the service to be provided by the Streetcar subject to annual review for changes. The plan sets forth hours of operation, headways, special operations, and other details of the service.

ATTACHMENT A

Special Event: An event that requires a deviation from the normal operating routine of the Streetcar. These may include extended hours of service for holidays, anticipated delays due to parades or construction work, and the opening of new Streetcar lines.

Startup Quantities: The quantity of spare parts and consumable items specified in contracts for streetcars and facilities as the initial volume of spare part stock provided by the contractor to be delivered before the closure of the contract.

System Safety Program Plan: A document developed by the transit agency describing its safety policies, objectives, responsibilities, and procedures

Support Vehicle: See Non-Revenue Vehicles.




Train-to-Wayside Communications: A system of digital communication between trains (streetcars) and equipment located along the wayside for the purpose of routing trains automatically to their destination and other uses.

Unusual Occurrence Report (UOR): A daily report created by Streetcar management for executive management. The UOR typically includes entries regarding delays to service, incidents, mechanical failures, and other unusual events.

Work: All work required to be provided by the County and its contractors under this Agreement, including all services, labor, equipment and materials, facilities and all other things necessary and proper for, or incidental to, start-up, and operating and maintaining the South Lake Union streetcar.

Exhibit B

LEGEND

-  Proposed Streetcar Alignment
-  Proposed Station Locations
-  Proposed Maintenance Facility Site



▲ NORTH Scale: 0 200 400



SOUTH LAKE UNION STREETCAR

Route Alignment and Stop Locations



Exhibit C

Startup Responsibilities

City of Seattle

1. Cooperation with Metro in development and review of Streetcar Service Plan
2. Arrange for required utility connections and service to Streetcar facilities
3. Contract for any service not assigned to Metro, including capital repairs and replacement beyond normal maintenance of facilities and equipment
4. Test the facilities and equipment, conduct integrated testing, certify and commission systems
5. Select revenue passenger service date
6. Provide all special tools or test equipment needed by County to perform its duties under the Streetcar Agreement
7. Deliver equipment maintenance requirements and drawings to Metro
8. Obtain "Startup Quantity" of spare parts
9. Prepare Car and Station signage
10. Install Passenger Information System changeable signs
11. Marketing of the streetcar opening

King County

1. Develop Streetcar Service Plan, Operations Plan, System Safety Program Plan
2. Incorporate the Seattle Streetcar into Metro's System Security Plan
3. Comply with regulatory requirements
4. Hire and train staff
5. Develop and implement operating and maintenance procedures
6. Operate and maintain the streetcars
7. Consult with City regarding Revenue Passenger Service date
8. Assist with operational testing
9. Conduct emergency preparedness drills
10. Prepare train schedules, operator runs and car assignments
11. Prepare "Bus Bridge" plan
12. Provide Non-Revenue Vehicles
13. Arrange Lost and Found handling
14. Develop media relations procedures
15. Establish procedure to collect and report ridership, NTD, and performance data

ATTACHMENT A

Exhibit D

Seattle Streetcar Maintenance Responsibilities

City of Seattle

1. Utility Connections
2. Pavement
3. Traffic signals
4. Traffic signs
5. Streetcar signs
6. Pavement markings
7. Stations
8. Station landscaping
9. Lighting
10. Shelters and furnishings
11. Information posters
12. Poles – joint use
13. Track Drains – all except the portion between the rails
14. Driveway crossings – maintain pavement

King County

1. Wheel Truing
2. TWC on Cars
3. Radio
4. Maintenance Facility
5. Cranes
6. Shop Machines
7. Roll-up Doors
8. Phones and Networks
9. Track
10. Track Drains – between rails
11. Driveway crossings – maintain rails
12. Overhead centenary system
13. Trolley bus crossings
14. Poles – strain poles
15. Span wires
16. Substations
17. 750 VDC Vaults
18. Fencing

ATTACHMENT A

Exhibit E

Cost Methodology

Start-up Cost Methodology

Direct costs for staff dedicated to the Seattle Streetcar operation and maintenance activities, including salaries, benefits, overtime and a charge for workers compensation costs.

Direct and indirect costs for training and maintenance support from Metro's Power and Facilities Section for the OCS, substations, maintenance facility and trackway once turned over to the County for maintenance. Costs will include direct staff salaries and benefits, section administration, support vehicles and a charge for workers compensation costs.

Indirect and general administration costs including Transit Division and King County support services allocated based on methodology used for reporting to National Transit Database (NTD) and reflecting costs reported to NTD, and Light Rail Section administrative costs.

Direct materials and supplies, including parts, shop supplies and office equipment and supplies.

One time costs for incorporating Seattle Streetcar parts into the vehicle maintenance inventory system, adjustments to scheduling and customer information software systems, staff hiring and customer information signage.

Purchase of non-revenue vehicle(s) to support service operation.

O&M Cost Methodology

Direct costs for staff dedicated to the Seattle Streetcar operation and maintenance activities, including salaries, benefits, overtime and a charge for workers compensation costs.

Direct and indirect costs for maintenance support from Metro's Power and Facilities Section for the OCS, substations, maintenance facility and trackway. Costs will include direct staff salaries and benefits, section administration, support vehicles and a charge for workers compensation costs.

Indirect and general administration costs including Transit Division and King County support services allocated based on methodology used for reporting to National Transit Database (NTD) and reflecting costs reported to NTD, insurance premiums in proportion to the county's overall ridership, risk and claims costs associated with the streetcar as described in the terms of the agreement, and Light Rail Section administrative costs.

Direct materials and supplies, including parts, shop supplies and office equipment and supplies.

ATTACHMENT A

Other service provided by the County outside of the operating scope such as bus bridges, body work, moving streetcars to other locations for major overhauls, etc. These and any other activities negotiated under separate agreements will be charged based on actual cost incurred.

2008 projected O&M costs are approximately \$2,000,000

Fare Calculation Methodology

Cash fares will be based on actual revenue collected through the on-board cash farebox.

Pass fare revenue will be established based on Metro's reimbursement from the regional fare account(s) based on ridership initially obtained via a passenger survey. When available, data from the regional fare coordination system (ORCA) will be used to determine the value of pass fare revenue.

When available for use, fares paid by electronic purse will be treated as if they were cash fares adjusted for any transfer activity.

If sufficient data is not collected electronically, fare revenue from transfers from other Metro services will be determined via a passenger survey conducted at least every 3 years.

Any special fare media used on the Seattle Streetcar will count as Seattle Streetcar revenue equal to the amount paid to Metro when the fare media was issued.

2008 projected fare revenue, based on current fares, is \$300,000.

STATE OF WASHINGTON – KING COUNTY

--SS.

213052
CITY OF SEATTLE, CLERKS OFFICE

No.

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

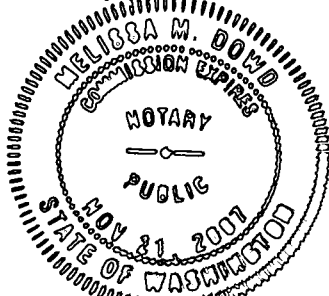
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122424 ORDINANCE

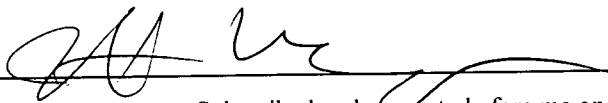
was published on

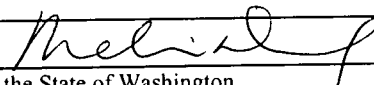
07/02/07

The amount of the fee charged for the foregoing publication is the sum of \$ 320.85, which amount has been paid in full.



Affidavit of Publication


Subscribed and sworn to before me on

07/02/07

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

ORDINANCE 122424

AN ORDINANCE relating to the Seattle Streetcar; addressing the financing of operating, maintenance and capital costs of the Seattle Streetcar and authorizing agreements in connection therewith; authorizing an agreement with King County for operation and maintenance of the Seattle Streetcar; authorizing the creation of a City fund; authorizing the loan of funds from the City's Consolidated (Residual) Cash Pool, or its participating funds, to the new fund; making an appropriation from the new fund; and reducing an appropriation in the 2007 Budget; removing a budget proviso that had restricted spending on streetcar operations.

WHEREAS, Ordinance 121951 authorized the construction of a modern streetcar line serving downtown Seattle, Denny Triangle and South Lake Union (SLU), and the formation of Local Improvement District (LID) No. 6750; and

WHEREAS, the City Council authorized the Executive to begin negotiation of an operation and maintenance agreement with King County Metro in Ordinance 121850; and

WHEREAS, Ordinance 121850 requires that City funding for operation and maintenance of the streetcar be provided exclusively from funds from the sale of City surplus property in SLU and from revenues derived from new revenue sources specifically devised to pay for the SLU streetcar operation and maintenance costs; and

WHEREAS, the Executive has proposed an interlocal agreement and a finance plan that satisfies the requirements of Ordinance 121850; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Mayor or his designee is authorized to execute an agreement substantially in the form of Attachment A.

Section 2. Attachment B, the Seattle Streetcar Operations and Maintenance Financial Plan (the Financial Plan) proposed by the Executive has been submitted and will be used as the "Baseline Financial Plan" to monitor and track actual expenditures and revenues against those projected in the Financial Plan. The Executive shall provide an annual written report to the City Council pertaining to the Seattle Streetcar's operations and finances for the preceding year, comparing actual experience with the Baseline Financial Plan. The report will be due no later than March 1 of every year. The report shall include projected vs. actual ridership numbers, projected vs. actual revenues and expenditures, actual use of funds from the Consolidated (Residual) Cash Pool for interim financing, the number of Metro service hours used to operate the streetcar, and a narrative explaining any operational or capital issues that have occurred in the previous year or are anticipated.

Section 3. The Mayor or his designee is authorized to negotiate and execute streetcar vehicle and station sponsorship agreements consistent with the Financial Plan and consistent with Seattle Municipal Code provisions relating to regulation of signage. The sponsorship agreements may provide for the

City to grant sponsorship rights for streetcar vehicles and stations, establish the term and payments associated with the sponsorship rights, and establish the forms of sponsorship identification such as signage and audible messages that will be provided to sponsors, with the limitation that agreements will not allow for coverage of streetcar vehicle windows.

Section 4. The Director of Finance is hereby authorized to create in the City Treasury the Seattle Streetcar Fund, from which may be paid certain operating, maintenance, and capital costs related to the Seattle Streetcar, including costs for city administration. The Fund shall receive all revenues associated with operating and maintaining the Streetcar, including but not limited to revenues from sponsorship agreements; federal, state, county or other grants or transfers; private funding, donations or gifts; property sales proceeds; and other monies as authorized by ordinance. The Fund shall receive earnings and pay interest on its positive and negative balances. The Director of Seattle Transportation Department shall have responsibility for administering the Fund.

Section 5. A loan of up to Two Million Two Hundred Thousand Dollars (\$2,200,000) principal and interest outstanding at any one time is hereby authorized to be made from the City's Consolidated (Residual) Cash Pool or its participating funds to the Seattle Streetcar Fund. Said loan is to be repaid no later than December 31, 2018 with interest on the loan at the rate of return of the City's Consolidated (Residual) Cash Pool.

Section 6. The entire principal and interest amount of the loan authorized by Section 5 shall be repaid.

Section 7. The Director of Finance may effectuate the loan authorized in Section 5 above by transferring cash from one or more of the funds participating in the City's Consolidated (Residual) Cash Pool to the Seattle Streetcar Fund, or by carrying the Seattle Streetcar Fund in a negative cash position in an amount not to exceed Two Million Two Hundred Thousand Dollars (\$2,200,000), until no later than December 31, 2018. The Director of Finance is further authorized to establish, and modify if necessary, from time to time, a repayment plan and schedule.

Section 8. If the Executive intends to propose an annual Streetcar Service Plan to the County as described in Section 6.1 of Exhibit A that includes potential changes in streetcar operations that may result in headways over or under 15 minutes or hours of operation that are over or under a weekly equivalent of 15 hours per day, or that requires a level of City funding that exceeds 10% of that projected in the Baseline Financial Plan for that year, then the Executive must submit the proposed Streetcar Service Plan to the City Council for its review and approval, via Council resolution, prior to submitting the plan to King County for its consideration.

Section 9. By October 1, 2007, the Executive shall propose a plan to pay for any remaining capital costs pertaining to the South Lake Union Streetcar using the following revenue sources: federal grants that have been requested for 2007, the proceeds from the sale of excess City property adjacent to the Seattle Streetcar maintenance base; \$2 million from the South Lake Union Proceeds Subaccount established by Ordinance 120411; and \$1.5 million from the Denny/South Lake Union Transportation Mitigation Funds. The order in which these funds are used should be prioritized by availability to minimize the extent to which interim financing is used to pay for streetcar capital costs. Once the streetcar capital costs are paid, the Council may consider using any remaining funds, if appropriate and allowable, to establish a contingency fund to pay for major maintenance for the streetcar and/or pay for the streetcar's Phase I operation costs.

Section 10. The Executive shall provide written confirmation to the Chair of the transportation committee that sufficient insurance for the Seattle Streetcar has been acquired prior to beginning operations of the Streetcar. The Executive shall maintain sufficient insurance for the duration of the project.

Section 11. In order to pay for necessary costs and expenses incurred or to be incurred in 2007, but for which insufficient appropriations were made, a new appropriation is made in the 2007 Budget from the fund shown, as follows:

Fund -- Department -- Budget Control Level -- Amount

Seattle Streetcar Fund (XXXXX) -
Seattle Department of Transportation --
Streetcar Operations -- \$579,000

Seattle Streetcar Fund (XXXXX) --
Seattle Department of Transportation -- Debt
Service -- \$2,000

The purpose of the Streetcar Operations BCL is to operate and maintain the Seattle Streetcar. The purpose of the Debt Service BCL is to make interest payments on outstanding balances of the interfund loan authorized in Section 5.

Section 12. The appropriation for the following item in the 2007 Budget is reduced from the fund shown, as follows:

Fund -- Department -- Budget Control Level -- Amount

Transportation Operating Fund (10310)
-- Seattle Department of Transportation --
Mobility-Operations (17003) -- (\$815,000)

Section 13. The restrictions imposed by the following budget proviso are removed and they are no longer restrictions for any purpose including for Subsection 1(b) of Ordinance 122298:

Department -- Green Sheet -- Proviso
Description -- Budget Control Level

Seattle Department of Transportation
-- #99-1-A-1 -- Prohibits the spending of money appropriated for 2007 for the Seattle Department of Transportation's Mobility Operations BCL for operation of the South Lake Union Streetcar until authorized by future ordinance. -- 17003

Section 14. Acts consistent with the authority and prior to the effective date of this ordinance are hereby ratified and confirmed.

Section 15. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 25th day of June, 2007, and signed by me in open session in authentication of its passage this 25th day of June, 2007.

Nick Licata

President of the City Council

Approved by me this 27th day of June, 2007.

Gregory J. Nickels, Mayor

Filed by me this 27th day of June, 2007.

(Seal) Judith Pippin

City Clerk

Attachment A - INTERLOCAL AGREEMENT between King County and City of Seattle for Seattle Streetcar Operations and Maintenance

Attachment B - Seattle Streetcar Operations and Maintenance Financial Plan (May 2007)

See City Clerk for Attachments

Publication ordered by JUDITH PIPPIN, City Clerk

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